# Appendix C

## Cowra (NSW) Rural Planning Review

INDEPENDENT REVIEW PANEL – COWRA SHIRE COUNCIL

30 March 2006

The Hon Frank Sartor MP
Minister for Planning

Dear Minister,

**Review of Certain Planning Matters in Cowra Shire**

You appointed an Independent Review Panel on 7 December 2005 to review certain planning matters in Cowra Shire and to report by March 2006. Herewith is the Panel's report.

The principal recommendations of the Panel are that:

1. Cowra LEP 1990 (Amendment 14) be made as a matter of priority with a minimum lot size of 400ha inserted at clauses 12(3) and 17A(b).
2. On balance, no further action be taken with respect to planning consents given by the Cowra Shire Council that may be uncertain.
3. Cowra Shire Council be urged to publish and/or republish section 101 notices with respect to planning consents given by the Council that may be uncertain.

In addition, the Panel is of the view that the current actions being taken by Cowra Shire Council to ensure the orderly and sustainable development of the Cowra Shire are appropriate, subject to periodic review.

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Chairperson

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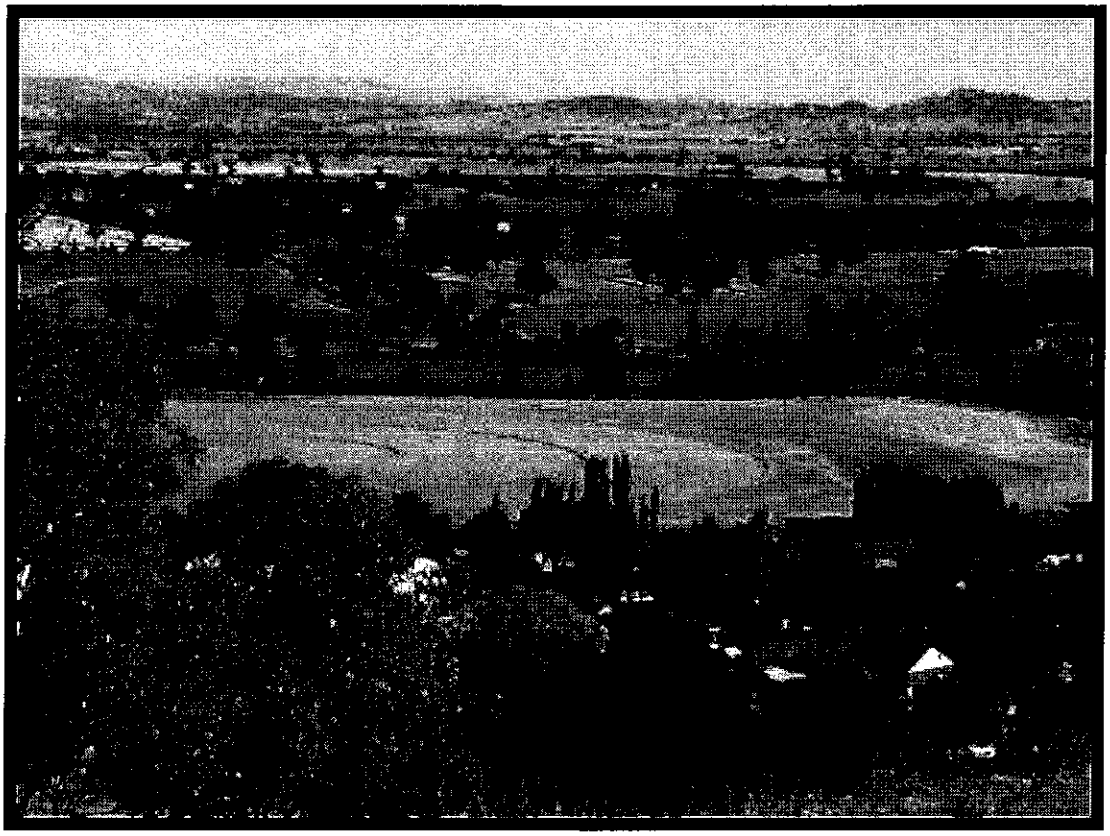
INDEPENDENT REVIEW PANEL

# REPORT TO THE HONOURABLE FRANK SARTOR MP
# MINISTER FOR PLANNING



## REVIEW OF CERTAIN PLANNING MATTERS
## Cowra Shire

MR ADRIAN GALASSO, CHAIRPERSON
DR REGINA FOGARTY
MR KEVIN CLELAND

MARCH 2006

# INTRODUCTION

On 7 December 2005 the Honourable Frank Sartor MP, Minister for Planning appointed an Independent Review Panel to review certain planning matters in Cowra Shire and to report by March 2006.

The Panel comprised:

Mr Adrian Galasso, Chairperson
Dr Regina Fogarty
Mr Kevin Cleland

The terms of reference set by the Minister were:

1. As a matter of priority, advise the Minister for Planning whether the interim Cowra Local Environmental Plan 1990 (Amendment No.14) should be made.
2. Identify and describe possible errors in the planning process, and particularly whether actions have been taken by the Council that contravened environmental planning instruments.
3. Identify and describe the nature and extent of planning consents given by the Council that may be uncertain.
4. Consider and advise the Minister for Planning what actions the Government should take to address the issues arising from the first three terms of reference, particularly in relation to uncertainty of property rights and consents.
5. Advise on the appropriateness of current actions being taken by Cowra Shire Council (including its preparation of its land use strategy) in supporting the orderly and sustainable development of the Cowra area.
6. Recommend any other appropriate actions that would promote improved land use planning for the Cowra local government area.

The Panel publicly advertised its terms of reference seeking submissions in the Cowra Guardian, Central Western Daily, Sydney Morning Herald and Daily Telegraph on 19 December 2005. The Panel requested information from the Department of Planning, Department of Primary Industries and Cowra Shire Council. In addition, the Panel also wrote to applicants, landowners and those with delegated authority who had an association with the 35 development applications whose determination is now considered uncertain by Council.

The Panel advertised a public forum session in the Cowra Guardian, Central Western Daily, Sydney Morning Herald and Daily Telegraph on 27 February 2006 and wrote to all parties who had previously made a written submission to the Panel advising of the public forum session.

Written responses were received from a total of 60 parties. The public forum session was held in Cowra on 9 March 2006 and 19 interested parties presented their arguments. The Panel undertook private inspections in Cowra Shire on 8 March 2006.

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## APPENDICES



Cover photograph: A view from Bellevue Hill Lookout, Cowra

with a subdivision standard of 40ha on prime agricultural land, 2ha on non-prime agricultural land and 1 concessional lot per 40ha of existing holding on prime agricultural land.

Subdivision of Rural 1(a) lands well in excess of the demand for rural lifestyle development has occurred since gazettal of Cowra LEP 1990. Presently, there are about 600 subdivided lots on Rural 1(a) land and about 700 lots available on lands zoned for rural lifestyle purposes. The average uptake of these lots has been less than 6 lots per year.

Of particular relevance to the Panel is that in May 1998 the definition of prime agricultural land in Cowra LEP 1990 was amended. Up until that time it was within Council's discretion to define prime agricultural land. From May 1998 prime agricultural land was to be determined by reference to land classification maps prepared by the Department of Agriculture. The interpretation of the definition of prime agricultural land from May 1998 until 2004 by a number of parties associated with assessing and approving subdivision applications has resulted in a level of uncertainty for a number of approvals which are now the subject of this review. In effect prime agricultural land has been reclassified as non-prime agricultural land where there has been no lawful ability to do so.

The Department of Planning has been investigating these (and other) planning issues in Cowra Shire since 2004. This follows submissions from residents concerned with Council's assessments and determination of development applications, mainly in regard to subdivision of Rural 1(a) lands. In response the Department of Planning wrote to Cowra Shire Council in November 2004 to seek clarification of Council's understanding of determinations of classification of prime and non-prime agricultural land under the Cowra LEP 1990. The Department of Planning asked the Council to review all development applications granted since 1998 where consent could have been affected by a misunderstanding of Cowra LEP 1990 provisions. In August 2005, Council advised the Department of Planning it had completed the review and considered that there were 35 development applications where consent may be in question.

With the encouragement of the then Director-General of Planning, Council subsequently prepared, exhibited and adopted draft Cowra LEP 1990 (Amendment 14) (exhibited with a minimum lot size of 400ha but ultimately adopted with a minimum lot size of 100ha for a dwelling entitlement) as an interim measure to restrict subdivision of Rural 1(a) lands.

**Independent Review**

The Minister for Planning has referred the making of draft Cowra LEP (Amendment 14) to the Panel as Term of Reference 1. Matters relating to Cowra Shire Council's processing of the 35 uncertain development approvals have also been referred to the Panel under Terms of Reference 2, 3 and 4. Council's current management and review of its planning procedures are the subject of Terms of Reference 5 and 6.

# OVERVIEW

In 1973, the NSW State Government established a temporary State-wide subdivision minimum for rural land of 40 hectares (ha) for a dwelling entitlement. The policy was in response to growing concerns about the fragmentation of agricultural land and the spread of lifestyle blocks in rural areas.

The 40ha minimum had little practical relevance to commercial, sustainable agricultural enterprises or the degree of geographic, climatic or biophysical variability across the NSW agricultural landscape. There were concerns that the 40ha policy discriminated against intensive agriculture and ignored the economic realities facing farmers. Other problems with an arbitrary minimum allotment size included environmental issues with insufficient catchment areas to feed dams or capacity to absorb household waste.

In order to promote the policy to rural landowners, the then State Planning Authority also offered a number of subdivision 'concessions' to farmers, including the option of separating undersized allotments from the main farm. However, at the time it was suggested that the policy could potentially promote rural sprawl, result in environmentally harmful practices and increase land use conflict.

Concessional allotments were intended for farm workers and family members, but over time concessional lots have been sold to unrelated purchasers. The 40ha temporary minimum was intended to be an interim measure until more meaningful standards could be determined in each LGA by the respective council. It was a holding measure until more appropriate minimums could be worked out.

**Cowra LEP 1990**

Cowra LEP 1990 was gazetted in 1990 after a long and protracted history, commencing in 1982. The original draft Plan was exhibited in 1984 with a 400ha minimum lot size with a dwelling entitlement but did not progress due to concern about this issue. The plan was re-exhibited in 1989. The then Soil Conservation Service and Department of Agriculture objected to the draft Plan due to a range of negative planning outcomes and impacts upon the security of agriculture.

The Department of Planning acknowledged the potential for negative planning outcomes associated with the Cowra LEP as proposed being 40ha for prime agricultural land and 2ha for non-prime agricultural land. In lieu of amending the poor rural planning controls, the Department proposed an annual monitoring programme to monitor rural dwellings in Cowra. It is not known whether this ever occurred, but is unlikely.

The concerns about management of agricultural land in Cowra Shire included:

- Exclusion of Class 3 land from the definition of prime agricultural land (contrary to State-wide practice).
- Low subdivision standards for rural dwellings (40ha) with high potential for land use conflict, loss/fragmentation of prime agricultural land, servicing costs and cumulative impacts.
- Little practical distinction for subdivision controls between 1(a) Rural zoned (originally 1ha on non-prime agricultural land) land and 1(c) Rural Small Holding zoned land.
- Objectives of the Rural 1(a) zone were inherently in conflict as they were to protect agriculture yet facilitated unplanned rural residential development.

The Department of Agriculture recommended a 400ha minimum lot size for a dwelling in the Rural 1(a) zone in 1989 (and again in 1992). The Cowra LEP 1990 was gazetted on 23 November 1990

# ISSUES RAISED IN SUBMISSIONS

## INDEPENDENT REVIEW PANEL (IRP)

The IRP received 60 submissions following its advertised call for submissions and letters to known interested parties and 19 parties appeared at the public forum. Despite concerns raised by some residents the Panel is satisfied advertising and notification procedures have been adequate. The Panel has considered all issues raised relevant to the terms of reference in making its recommendations. The issues raised in submissions included:

### Land Use Planning

- Over the last 2 years Council has restructured its planning department.
- Under the new planning department Council has been able to progress planning reform in the Shire with the completion of draft Cowra LEP (Amendment 14), the commencement of a land use strategy, review of Section 94 contributions, a heritage study and a floodplain risk management study.
- Council has initiated a Strategic Growth Plan for the next 30 years (Cowra 30).
- The 400ha minimum lot size suggested for the interim LEP reflects farming enterprises typical to the Cowra area.
- The Panel hearing, the introduction of draft Cowra LEP (Amendment 14) and the preparation of the new LEP will negatively affect investment in the Cowra Shire.
- Council should be responsible for its own planning decisions as the regulations are Council's.
- Land in Cowra should not be treated as a single parcel. There are many types of land in the Shire, from highly productive agricultural land to non-arable rock formations.
- Council was given a grant of $86,000 by the State Government to complete its new LEP. Does this mean Council will automatically follow the wishes of the State Government?
- More inclusive consultation and better focussed planning for roads in the Shire is essential.
- Approved DAs should not be dismantled.
- Early resolution of issues is required to remove uncertainty.
- Wirong Dairy is an efficient operation and should not be classified as a feedlot.
- Council is not discharging its planning responsibilities in a transparent, equitable manner.
- The State Government should not dictate planning outcomes to Local Government.
- Council should implement basic planning education for Councillors.
- Current property rights need to be confirmed.
- Council must ensure adequate infrastructure is provided for rural residents.
- Council is ignoring ratepayers by proceeding with Amendment 14.

### Cowra LEP 1990 (CLEP 1990)

- A number of consents issued by Council in the past are not consistent with the provisions of CLEP 1990. Council has assisted Department of Planning in identifying those consents relating to subdivisions for dwelling house purposes on land zoned Rural 1(a) between 1998-2005.
- Provisions applying to development on Rural 1(a) land in CLEP 1990 have been a major contributing factor to land use planning problems. 15 years of rural subdivision within the zone has created land use conflicts.
- LEP 1990 should remain with a minimum lot size of 40ha with building entitlements. All existing property rights should also be retained.
- Consent conditions should be more strictly monitored.

- Submissions indicate the current LEP provides outcomes acceptable to many residents.
- Conditions attached to subdivisions in Rural 1(a) areas have not required provision of adequate infrastructure.

**Draft Cowra LEP 1990 (Amendment 14)**

- DAs which have been determined by Council using Amendment 14 should be reviewed to avert legal action.
- Amendment 14 has the ability to stifle growth in the Shire.
- Many landowners were unaware of whether they had building entitlements or not until Amendment 14.
- Clauses in the current planning provisions allow for better utilisation of non-prime agricultural land. The new amendment deletes such clauses.
- The interim LEP is too rigid, and too broad based for merit assessment.
- The draft LEP is not based on objective facts and is attempting to use a simple solution to solve a complex problem.
- The Shire-wide land use strategy should be completed before a new LEP is made.
- The proposed interim LEP will not solve rural land use issues.
- Constraints in the draft LEP are not sustainable.

**Agricultural Land**

- Draft Cowra LEP 1990 (Amendment 14) should be made as a matter of urgency as recommended to the Minister for Planning with a minimum lot size of 300ha or greater to allow improved security of agriculture in the Shire.
- Large scale subdivision bordering on prime agricultural land will reduce the productivity of the agricultural land.
- Department of Primary Industries advice is not relevant to Cowra and residents lack confidence in Department of Primary Industries representatives.
- Intensive agriculture should be more clearly defined.
- Prime and non-prime agricultural land should be better classified.

**Community Participation**

- Cowra residents are generally happy with the existing LEP but recognise it needs review.
- The community wants Council to be consistent in its decision making.
- Draft Cowra LEP 1990 (Amendment 14) should not be made. Over 200 submissions have been made to Council supporting a minimum lot size of 40ha. Only 8 submissions supporting the 400ha minimum lot size were received.
- Cowra is suitable for major development, being located on a rail link, and with a temperate climate and an available water source.
- A regional planning group should be appointed to co-ordinate future development in Cowra and surrounding Shires.
- Concessional lots should be re-introduced.
- Council's criteria as to the permissibility of development are not clear.
- Many subdivisions granted in Cowra are sound but developers are not adhering to conditions of approval which leads to negative development outcomes.
- Subdivision infrastructure should be implemented prior to subdivision occurring.
- Community title should be encouraged to provide development that can have lessened environmental effects.
- Council should be dismissed and an administrator appointed.

**Lot Size**

- Support for the retention of the 40ha minimum lot size remaining as 40ha is a decent size for a usable parcel of land and for land management in the Shire.
- Landholdings much smaller than 400ha can be made productive, provide diversity of agricultural pursuits and can give lifestyle opportunities.
- Any future subdivision should take into consideration adjoining landholders and any disruption to adjoining farming activities.
- There should be a number of zones with different minimum lot sizes depending on the proximity to towns and infrastructure.
- The availability of smaller landholdings would encourage investment in the area by 'treechangers'.
- A rural land strategy should have been undertaken prior to preparation of Amendment 14.
- Constraints applied to land use affects investment and growth in country areas.
- Some councillors have had conflicts of interest.
- More comprehensive environmental studies, such as flora and fauna surveys, should be conducted prior to approval being given for future subdivisions.
- Not all small landholdings have detrimental environmental effects due to better management and pest control.
- The concessional lot system has been misused.
- Concessional lots should be re-introduced.
- Many subdivisions have been approved with little regard to bushfire provisions.
- The minimum lot size changes proposed are only due to the pressure applied by the State Government. Agencies adhere to the ideology that agricultural land should be maintained.
- The 400ha minimum lot size suggested for the interim LEP reflects farming enterprises typical to the Cowra area.
- Larger blocks will mean more weed infestation and bushfire hazard.
- Less migrants to Cowra will lead to a decline in services in the town.
- Small lot creation should remain to provide financial surety during hard times.
- Limited small lot creation would preserve the majority of the land for farming.

**DRAFT COWRA LEP 1990 (AMENDMENT 14)**

As part of the review the Panel also took into account matters raised in submissions to the public exhibition of Draft Cowra LEP 1990(Amendment 14).

# TERMS OF REFERENCE

## TERM OF REFERENCE 1

**As a matter of priority, advise the Minister for Planning whether the interim Cowra Local Environmental Plan 1990 (Amendment No.14) should be made.**

Draft Cowra Local Environmental Plan 1990 (Amendment 14) has been prepared by Cowra Shire Council following Council's adoption of a resolution to do so on 20 December 2004(see Appendix 1). Council's decision is expressed to be an interim measure to provide security and certainty for all forms of agriculture while reducing the potential for land use conflict with lifestyle developments in the rural areas of the Shire.

The weight of evidence in submissions made to the Panel clearly establishes the need to better protect agricultural land within Cowra Shire. This situation has arisen because Cowra LEP 1990 contains rural settlement provisions which are inconsistent with the long term sustainability of agriculture. Specifically, Cowra LEP 1990 generally provides for minimum lots sizes with a dwelling entitlement in Rural 1(a) zones of 40ha for prime and 2ha for non-prime agricultural lands. However, the way to adequately protect agriculture in the Shire over the long term, while providing for appropriate lifestyle development, is strongly disputed within the community.

**State Government Policy**

State Government policy is set out in the following documents to which the Panel has had due regard:

- Policy for Sustainable Agriculture in New South Wales (1998);
- NSW Sustainable Agriculture Implementation Review Group Report (2001);
- Rural Lands Policy (Department of Planning, 2000);
- Policy for the Protection of Agricultural Land (Department of Primary Industries, 2004); and
- State Environmental Planning Policies.

The 2001 Report noted above was endorsed by the Premier in July 2002. It recommended that:

- Minimum lot sizes for subdivision that may be eligible for a dwelling consent should be determined based on the area required to sustain a farming enterprise typical for that locality. This approach recognises the role of off farm income and that smaller parcels of agricultural land can be traded, however no dwelling rights are attached to these smaller lots.
- Concessional allotments are an inappropriate form of subdivision and should be progressively removed from plans across the State.
- Rural lifestyle opportunities should be provided for in a planned way, based on rural residential strategies and zones.
- Intensive forms of agriculture need to be catered for in the planning process. Determining allotment sizes for sustainable intensive agricultural developments will need to carefully consider potential environmental impacts as well as return on capital invested.

Of particular relevance for the Panel in considering these documents is that significant subdivision of land within the Rural 1(a) zone in Cowra Shire for lifestyle dwelling development has occurred, to the extent that over 600 lots have been created between 1990 and March 2005. Much of this subdivision is now generally considered inappropriate in a planning sense. These lots are in addition to the

potential 700 lots in designated Rural (Small Holdings) 1(c) zones. Average uptake since 1990 has been under six rural dwelling lots per year.

It is claimed in some submissions that as a consequence of these developments the ability of a number of genuine farmers to undertake traditional, commercial and sustainable agriculture is being adversely affected. On the evidence available to the Panel, the Panel has been satisfied this situation has been increasingly occurring in agriculturally productive areas of the Shire. Moreover, the majority of those submissions opposing an increase in the minimum lot size for dryland agricultural areas have not provided convincing merit argument to support their case, but have chosen to largely rely on the number of residents in the local community who oppose an increase in the minimum lot size.

Minimum lot sizes for rural dwellings are guided by State-wide Government policies to protect agricultural land. These policies and accompanying guidelines seek to ensure that the determination of minimum lot sizes for rural subdivisions with dwelling entitlements is based on the area required to sustain a farming enterprise typical for that locality, while allowing for farm adjustments. A detailed assessment to determine a minimum lot size in dryland agricultural areas has not yet been undertaken for Cowra Shire.

The policies and identification of lot sizes for dwellings in the Rural 1(a) zone also seek to ensure:

- Loss and fragmentation of agricultural land from unsustainable settlement is minimised;
- Land use conflict between agriculture and other sensitive land uses is avoided;
- Agricultural land is valued for its agricultural potential and not for speculative development potential;
- A critical mass of farms is maintained in areas to support reliant services and businesses;
- The wider community does nor bear the social and economic cost burden of providing services and infrastructure for a dispersed rural settlement pattern;
- The need to protect the resource (land) upon which agriculture, forestry, mineral development and energy production rely, and to minimise inappropriate demand on scarce natural resources such as surface and groundwater;
- Environmental impacts of rural settlement are minimised and adverse impacts such as location in environmentally sensitive areas (flood, bushfire or biodiversity areas) are prevented;
- Agriculture can respond to variability in climate, commodity prices and externalities; and
- Strategic planning for long term land use decision making is the basis for future agricultural land management, including intensive agriculture and rural lifestyle opportunities and that such planning also determines the desirability of, and appropriate future location of all land uses.

**Agriculture in Cowra Shire**

The development, management and conservation of agricultural land in New South Wales is of State and regional significance according to the Department of Planning. More particularly, maintenance of sustainable traditional agriculture is very important to Cowra. According to the Department of Planning, economic, environmental and social considerations in this regard include:

***Economic***

- Many rural and regional areas rely heavily or solely on agriculture as the main economic activity. Agriculture is worth $91m to Cowra Shire (population 13,090) and provides over 21 percent of employment in the Shire.
- Cumulative impacts and gradual and continual decline in the number of genuine farms reduces the critical mass of farms needed to support the industry, be sustainable and also support reliant agri-businesses and services and rural communities.

- Unrealistic subdivision minima necessitates supplementary (off farm) income and effectively relegates farming to a part time activity. For farmers to increase rates of return, they need to increase the scale of operation. The more efficient and profitable farmers tend to be those expanding their farm area. The average farm size in the Shire is 451ha but due to multiple holdings the 'real' size is likely to be greater.
- Infrastructure costs and services are also often socialised across the wider community and not provided by the developer or the new resident.
- Economically, unsustainable farm sizes can contribute to adverse outcomes such as:
  - Increased environmental degradation as land is pushed harder for economic gain; and
  - Increased pressure for further subdivision into smaller lots for the lifestyle market which in turn can artificially inflate land values and prevent consolidation by genuine farmers.
- Australia is one of six net food exporting countries in the world and this has enormous impacts upon the nation's balance of trade.
- There is intense competition for the land resource upon which agriculture depends from urbanisation, settlement, mining, forestry and other specialist primary production uses.
- The issue of the finality of subdivision is rarely considered in the proliferation of urban encroachment. It is rare that land once subdivided for urban (rural residential) purposes will be converted back to an agricultural use.

***Environment***

- Most rural land is held in private ownership necessitating good management for positive environmental outcomes. There is evidence that larger agricultural holdings support better management of land degradation. There is also evidence to suggest that there is poor natural resource management on small hobby farms and rural residential blocks.
- There is very little good quality agricultural land in reliable rainfall areas. Ongoing loss of agricultural land forces agriculture into more marginal areas and places greater stress on already strained ecosystems.
- Large numbers of rural settlements compete for scarce resources such as water, with agriculture losing out to higher security stock and domestic purposes.

***Social***

- A critical mass of genuine, commercial agricultural activity, farmers and support industries is necessary to ensure the continuation of agriculture in the locality.
- An agriculturally based community is often united with common interests, networks and support structures. Social norms and traditions (bushfire brigade, agricultural shows, Landcare, local hall) are supported. Harmony is maintained as interests and values are shared and potential for conflicts minimised because tensions between genuine farmers and lifestyle seekers are not present. A breaking down of this critical mass occurs when agricultural land is removed from production through fragmentation and urban encroachment.
- Significant parts of Cowra Shire contain socially disadvantaged populations. These areas coincide with the areas where large amounts of subdivision for rural residential purposes have occurred which are predominantly located on remote and lower quality agricultural land.
- Absentee land owners make it necessary for existing farmers to control weeds, pests (locusts) and feral animals, result in a lack of support for social institutions in rural residential communities and create potentially negative impacts from social isolation due to remote rural residential settlement.
- Implementation of the Government's Planning Reforms will require most rural Councils in NSW to seriously address the issue of rural settlement.

**Strategic Landuse Planning**

It is stated by Council's Director-Environmental Services, rural residential development in the Rural 1(a) zone in Cowra Shire, particularly in areas removed from community centres, may lead to:

- Irreversible loss of agricultural land.
- Mounting conflicts between rural activities and rural residential dwellers.
- Inadequate and costly servicing of rural residential subdivisions.
- Loss of the rural landscape and its scenic appeal.
- Poor property management.
- Environmental degradation through loss of habitat, pollution and erosion.
- Social problems including isolation from health, education and community services.
- Negative influence on agricultural productivity and employment.
- Higher and potentially non-viable agricultural land prices.

However, there may also be positive aspects including financial benefits to the owners and developers of the land, improved real estate markets, provision for wider appreciation of a country lifestyle, increased Council rates and additional employment in service industries.

Council acknowledges these factors dictate that to ensure rural areas continue to flourish in Cowra Shire a strategic approach to land use planning involving all stakeholders is essential. Council has commenced work on a Shire-wide Planning Strategy which is to result in the preparation of a new Local Environmental Plan for Cowra Shire. An underlying premise is that rural land must first support the interests of the agricultural sector.

In this respect Council's Mayor, while supporting good rural residential development, stated:

> *However, I also appreciate that the rural zone supports our agriculture sector which in turn supports much of our local economy and employment base. Any rural-residential development must therefore not come at the price of sustainable agricultural objectives...*

And in reference to the relevant current planning instrument, Cowra LEP 1990, the Mayor reported:

> *In essence the 2 hectare rule in LEP 1990 for the non-prime agricultural areas of the shire is creating real problems for farmers and Council. Similarly, the 40 hectare rule for prime agricultural land could lead to problems, as some of our most productive farms are broken down into significantly smaller holdings, before being duly assessed with regards to sustainability in socio-economic, environmental and agricultural matters.*

The Department of Planning emphasised a strategic approach to land use planning is essential as:

- Cowra LEP 1990 currently provides rural settlement conditions inconsistent with established Government policy;
- Cowra Shire is experiencing substantial subdivision in its rural areas for lifestyle (dwelling) development with sufficient supply of these lots for 230 years at current demand;
- A significant number of these subdivisions are adversely affecting traditional, commercial and sustainable agriculture; and
- Some subdivision is occurring in remote areas of the Shire with potential negative impacts including land use conflict, loss of productive agricultural land, high cost provision of services and environmental degradation.

However, many in the community do not agree with what they consider the simplistic and inaccurate assessment of the supply and demand for rural lifestyle lots in the Shire. They consider the supply is relatively limited across various lot sizes and locations. According to these residents harsh subdivision rules are consequently not an appropriate outcome, would stifle development within the Shire, and remove current 'rights' to which landowners are entitled, and preclude equitable succession planning for farming families.

**Aims of Cowra LEP 1990 (Amendment 14)**

The specified aims of draft Cowra LEP 1990 (Amendment 14) are:

(a) to provide greater security for all forms of agriculture and to facilitate opportunities for diversification and farm expansion, and

(b) to minimise the potential for land use conflict between agriculture and settlement by requiring new dwellings to be ancillary to agricultural use, and

(c) to minimise the fragmentation and loss of agricultural land, and

(d) to reduce the uncoordinated demand for roads, infrastructure and services on the wider community that can be caused by inappropriately located settlement for lifestyle purposes, and

(e) to enhance the natural resource outcomes associated with sustainable management of rural lands, and

(f) to minimise settlement of rural areas for lifestyle purposes and encourage such development to be located after broad strategic land use assessment.

These aims are accepted by Council, government agencies and some within the community. Other community members consider further settlement should be encouraged in rural areas for the economic and social well-being of the Shire. The evidence available to the Panel is not consistent with this latter position, as widespread rural residential development has been shown to create significant landuse conflicts, to increase the cost of service provision, and to restrict traditional agricultural practices to the detriment of sustainable agriculture. The Panel strongly endorses the aims of the interim plan which have the sound and necessary strategic objectives of adequately protecting and encouraging sustainable agricultural productivity in Cowra Shire.

Cowra LEP 1990 (Amendment 14) significantly changes the aims of Cowra LEP 1990 in respect of the Rural 1(a) zone. The latter included in its aims that of providing "opportunities for people to live in rural areas" subject to encouraging and preserving all forms of agriculture and preserving prime agricultural lands. In practice, many development applications for subdivision with dwelling entitlements in rural areas were granted by Council with what appears only cursory consideration of the need to protect traditional agricultural pursuits. This has resulted in landuse conflicts in some locations. Because of the lack of strategic landuse planning in Cowra Shire a surplus of smaller lots exists (over 1300 lots have been created since 1990 with a take-up rate of about 6 lots per year).

One of the difficulties that arises is land use conflict with farmers. Farmers should be allowed to farm. Whilst this is hypothetically to be addressed at the planning stage, if a minimum subdivision standard is inappropriate then it is difficult to see how subdivision can be curtailed to take into account the land use conflict. Once the subdivision is effected and rural settlement takes place then private rights will overtake the pre-existing situation to create land use conflict. Inevitably the agricultural enterprise will lose in such a land use conflict because it may be regarded as incompatible with a non-agricultural land use. That problem usually exists from lifestyle lots/concessional allotments in which the concessional allotment is not occupied by relatives of the original agricultural landowners.

To the extent that it may be said that land use conflicts can be addressed by imposition of appropriate conditions of consent (as some submissions suggested), such an approach is to ignore the fact that by definition some aspects of agricultural land use are inherently not appropriate for conditioning, or cannot be conditioned. An example of this is the picking of grapes on a vineyard at early hours of the morning due to the sugar content of the grapes. No amount of conditions, other than a prohibition, can avoid a land use conflict with an adjoining "lifestyle" lot.

If then there is a desire, or a need for "lifestyle" lots as tends to be the prime use of most of the lots that in the past have been subdivided, then it should be handled in a co-ordinated and strategic way, involving not only stakeholders but also relevant authorities such as the Department of Planning, the Department of Primary Industries and the Council. Such potential should be achieved by specific zonings to ensure that additional lots are properly serviced, for example with roads, bridges, telephone and electricity.

There is no reason why, with proper strategic needs rather than local stakeholder motivation, there cannot be lifestyle blocks. This should be done by rezoning (for example to zone Rural 1(c)), with an environmental study. Cowra LEP 1990 (Amendment 14) only relates to Rural 1(a) land.

The Panel wishes to make it clear that it is not advocating there be no rural subdivisions, or no lifestyle blocks. The Panel recommends that such subdivision be undertaken in a co-ordinated way rather than in an ad-hoc or de facto way by private landowners.

Cowra LEP 1990 (Amendment 14) is expressed to be an interim plan which has as its primary aim the long term security of agriculture as well as minimising non-strategic settlement of rural areas for lifestyle purposes. These aims are consistent with State Government policy and recognise the importance of sustainable agriculture to the future well-being of Cowra Shire. Concurrent with the interim LEP, Council is preparing a land use strategy and a comprehensive LEP.

Council considers the main objectives of draft Cowra LEP 1990 (Amendment 14) could be summarised as:

- Protecting agricultural land uses, and
- Emphasising the need for strategic land use planning.

While a strategic land use plan and new comprehensive local environmental plan are prepared, the draft LEP seeks to achieve these objectives in the interim by:

- Eliminating the distinction between prime and non-prime agricultural land;
- Removing the 2 hectare and 40 hectare minimum lot size standards for a dwelling entitlement in the Rural 1(a) zone;
- Removing concessional lot provisions; and
- ADepartment of Planningting minimum lot size standards for dwelling entitlements in both dryland and intensive agriculture areas.

Many residents of the Shire object to the effective removal of what they consider their "right" to subdivide their land. Others, largely those pursuing traditional agriculture practices, support the aims of the interim LEP as it offers protection to their livelihoods. A long standing issue is the belief of many owners that they have a "right" to subdivide their land as they see fit. However, their "right" is not to subdivide their land (subdivision is a planning tool) but to make application to Council for subdivision based on the LEP, other relevant documents and a merit assessment. It is Council's role to consider the application and ultimately resolve to either grant or refuse consent to any subdivision on the merits of the application.

There is a need for ongoing education in this regard. However, many in the community believe Council's decisions should reflect their wishes, and not be subservient to State policy. Social issues raised in this regard included that the subdivision of rural land is a farmer's superannuation or allows portions of a farm to be passed on to the following generation. While these practices have been allowed to occur to date, further continuation of such "privileges" would be inconsistent with the protection and encouragement of long term sustainable agriculture in the Shire.

The Panel has reviewed the evidence relating to the subdivision of land zoned Rural 1(a) in Cowra Shire. Until recently subdivision of rural lands has been largely uncontrolled and uncoordinated in

any strategic sense, as evidenced by the available supply of lots compared with the demand for lots. Any short term demand (6 lots per year) could be met by the available supply (1300 lots) so sustainable development in Cowra is unlikely to be adversely affected in this interim period. The Panel has not been convinced that subdivision as supported by many of the submissions is intrinsically a sustainable practice unless guided by strategic planning.

The Panel is adamant that agriculture in Cowra Shire needs to be protected and encouraged for the Shire's long term well-being. On the available evidence uncontrolled and uncoordinated land subdivision in Cowra Shire could occur with retention of a 40ha minimum lot size in dryland agricultural areas to the detriment of sustainable agriculture. This would not provide a sustainable future for the Shire, but result increasingly in land use conflicts and difficulties in Council servicing relatively widespread rural residential properties.

Nevertheless, the Panel acknowledges that some rural areas have limited traditional agricultural value. In preparing the land use strategy Council should give consideration to potential alternative land uses in these areas.

The Panel strongly supports the aims of Cowra LEP 1990 (Amendment 14) as would be implemented in the interim through amendments to clauses 2, 5, 9, 10, 12, 13, 14, 17, 17A, 17B, 19 and 21 until the land use strategy and comprehensive LEP are aDepartment of Planningted. The Panel is satisfied the aims and content of draft Cowra LEP 1990 (Amendment 14) are generally consistent with the sought outcomes referred to in the introduction to this term of reference.

**Minimum Allotment Size**

There is general and widespread support for many of the provisions in the draft Cowra LEP 1990 (Amendment 14) as an interim measure while Council undertakes its Shire-wide strategic land use plan and prepares a new LEP. However, the minimum lot area for dryland agriculture to be inserted in clauses 12(3) and 17A(b) remains a major area of difference between Council, Council officers, Department of Primary Industries, Department of Planning and many in the community. There is less dispute over the recommended 40 hectare development standard for intensive agriculture (some submissions argue for a smaller area) and the removal of the concessional lot provision (some submissions argue for its retention).

The minimum lot size for dryland agricultural areas of the Shire is a most contentious issue. The minimum lot sizes suggested in submissions to the Panel for insertion in clauses 12(3) and 17A(b) for a dwelling entitlement in dryland agricultural areas were:

| | |
|---|---|
| Council | 100ha |
| Council Officers | 300ha |
| Department of Primary Industries | 400ha |
| Department of Planning | 300ha or greater |
| Community | 10 to 400ha |

In brief, reasons given in these submissions were:

*Council (100ha)*

- The LEP is an interim plan.
- Strategic land use planning is being undertaken by Council.
- Continued growth in the Shire would still occur.
- Agricultural land would be protected from undue speculative pressure.
- The public interest would be maintained in the short and long term.

*Council Officers (300ha)*

- A 300ha minimum lot size would effectively prevent further inappropriate "rural residential development" on an "interim basis".
- There is already an ample supply of rural land for rural residential development to supply the expected demand in Cowra Shire over the interim two year period. There are about 1300 existing lots available for an average dwelling demand of 5.6 dwellings per year.
- A 300ha farm unit size would support more sustainable farm management and ecologically sustainable objectives. The economies of scale permitted from larger sized farms facilitate crop and stock rotation which in turn reduces potential for overgrazing and soil degradation.
- Limitation on the size and number of subdivisions and dwelling-houses in the 1(a) Rural Zone would help reduce potential conflicts between agricultural land users and rural dwellers.
- 300ha would be consistent with the Department of Planning's Rural Lands Policy.
- A minimum lot size below 200ha would not be large enough to stop inappropriate rural residential development.

*Department of Planning (300ha/400ha)*

- 100ha is inadequate to give effect to the objectives of the LEP, the policy framework of the State government or the objectives of the EP&A Act.
- 400ha was based in fact and was indicative of the minimum area required for a commercial farm in this part of the state.
- 100ha is too small to prevent inappropriate subdivision, fragmentation and loss of agricultural land from genuine/commercial production, or to undertake sustainable and efficient agriculture. Precedent for this occurs wherever unsatisfactory minimum lot sizes for dwellings in rural areas are present (former Evans Shire).
- The dwelling right forms the major value component of the land for 100ha whereas above 300ha the agricultural value forms the major value component of the land.
- 300ha as recommended by Council's staff would give effect to the objectives of the draft LEP, be more consistent with the State government's policy position, minimise further fragmentation in the rural areas of Cowra, be consistent with the principals of ESD and allow opportunity for detailed analysis with the future land use strategy. 100ha would not achieve these aims and would in all likelihood see a flood of speculative subdivision for rural lifestyle purposes.
- Other local government areas in the Central West and beyond have more appropriate development standards for dryland rural subdivision to attract an ancillary dwelling. Narromine, Weddin, Parkes, Wellington each have 400ha, Dubbo 800ha, Coolah and Bogan 600ha, Gilgandra 500ha, Bourke, Brewarrina and Central Darling 2,000ha, and Wentworth in the far west has 10,000ha. These areas illustrate the need to match development standards more appropriately to local bio-physical and economic conditions. A summary of the regional status of minimum lot sizes in dryland agricultural areas is provided in Appendix 2.

The Department of Planning stated that despite the controversy with draft Cowra LEP 1990 (Amendment 14), principally over the 400ha development standard issue, the plan delivers other positive controls to the rural areas of Cowra. The draft LEP removes concessional lots which is consistent with State Government policy. The draft LEP also removes the provisions allowing unplanned and ad hoc rural settlement. The removal of these provisions strengthens the Rural 1(c) zone which is designated for rural lifestyle settlement and allows clearer focus on future strategic planning. The draft LEP seeks to make all future dwellings in the rural areas (unless on an existing holding or lot created with consent for the purposes of a dwelling) ancillary to genuine agriculture. It is a Department of Planning requirement that Council determine a minimum lot size based on sustainable agricultural enterprises typical for the Shire, taking into account the biophysical environment.

As noted above Council resolved to adopt a 100ha minimum lot size for dryland agriculture in clauses 12(3) and 17A(b) of Cowra LEP 1990 (Amendment 14). The Department of Planning challenged Council's position, as well as referring to the interim nature of the plan and the potential for some discretion, stating that:

- Council failed to consider the underlying policy intent of managing rural settlement.
- Council selected its proposed 100ha minimum lot size purely on local political circumstances.
- Council did not analyse the underlying basis for the selection of a development standard for an ancillary dwelling in the dryland agricultural area.
- Council's selection of the 100ha development standard is inconsistent with the objectives and specifics of the *Rural Lands Policy* (Department of Planning), the *NSW Policy for Sustainable Agriculture* and the *Policy for the Protection of Agricultural Land* (Department Of Primary Industries).

*Department of Primary Industries*

- A 400ha interim standard is supported by Department Of Primary Industries to reflect policy requirements and sustainable dryland agricultural needs under typical local conditions.
- 400ha has been the Department Of Primary Industries preferred minimum lot size since the early 1980s.
- A minimum lot size should be one that protects agricultural lands and removes the threat of speculative subdivision and other incompatible land uses.

The Department Of Primary Industries used a simplified version of the draft methodology it has developed with the Department of Planning to estimate its preferred minimum lot size. It recommends Council commission a detailed study using the recommended methodology as part of preparing its strategic land use strategy.

*Community (10ha to 400ha)*

- The Government should listen to the majority of the community which would mean a minimum lot size in dryland agricultural areas of 40ha (some suggest smaller lots).
- Some farmers stated that the minimum lot size should be at least 200ha to protect traditional agriculture in dryland areas of the Shire.

Argument from those wishing to maintain a minimum lot size of 40ha (or less) emphasised that by adopting an interim single area in the Shire of greater than 40ha:

- Owners' equity in their properties would be reduced.
- The choice of on and off farm income would be reduced.
- Smaller holdings could not be passed to family members.
- Choice for retirees, lifestyle and young people would be reduced.
- Further small scale agriculture would be eliminated.
- Other regional areas, such as Young which has a greater choice of lot size, would benefit.
- Doubt would be created for prospective investors as to the likely final planning rules.
- The variability in land types in the Shire from highly productive river flats to grazing only type lands at higher altitude is not being recognised.

The *Department of Natural Resources* and the *Department of Environment and Conservation* did not specify a standard but were supportive of a larger minimum bt size to protect the values for which they are administratively responsible.

*Dryland Agriculture*

A number of submissions from the community pointed out that using a "one size fits all" approach with a large minimum lot size for dryland agriculture in Cowra Shire does not account for the wide variability in the productive capabilities of agricultural land within the Shire. In general, those submissions then argue to maintain the current 40ha minimum lot size with merit assessment as this would provide landowners with greater flexibility in planning the future management of their land. Moreover, a smaller minimum lot size would allow Cowra to grow by encouraging more residents as well as young farmers with limited capital. In this regard they refer to the success of farms on smaller lots and claim that smaller farms can be more productive per hectare than farms with larger areas. The Panel does not doubt that in a number of cases the above is true, however, these claims are selective based on documented evidence before the Panel. In general, farms with larger area in dryland agricultural areas achieve greater productivity per hectare than farms with smaller area.

In addition the Panel has not been presented with conclusive evidence that ongoing subdivision of Rural 1(a) zoned land with 40ha lots in the absence of a strategic planning basis has provided or even can provide Cowra Shire with long term sustainable economic and social outcomes. But such subdivision is making sustainable agriculture more difficult. Nevertheless, the Panel supports the provision of land for rural residential lifestyle purposes, provided it is part of the strategic plan now being prepared by Council. A basic factor for rural residential development must be the efficient provision of services, which would indicate such development should generally only occur in proximity to existing towns and villages. Otherwise, the cost of servicing outlying and often disadvantaged development will continue to disproportionately burden people living in the towns and villages as well as having the strong likelihood of adversely affecting genuine dryland agricultural production. Specific use areas, such as around Wyangala Dam should however be investigated as part of the land use strategy.

The issue of maintaining an efficient sustainable agricultural industry in a global market is generally not mentioned by those arguing to maintain a 40ha minimum lot size. The evidence is that for smaller lot sizes such as 40 to 200ha the dwelling entitlement is a major component of the land price. Land is lost to agriculture in many cases where this occurs as the land is used more for lifestyle purposes than genuine agriculture (which is not to say all the land is lost to agricultural production). The adverse effects on traditional agriculture will continue if this situation is not rectified. The minimum lot sizes (with dwelling entitlement) in agricultural areas needs to reflect the dryland agricultural value of the land. On the evidence to the Panel this may occur in the range of 200 to 500ha or more in Cowra Shire, reflecting the variability in the dryland landscape units within the Shire. The Panel has not been convinced that a contrary position is justified by submissions which use broad statistics to support their position.

The Panel has also noted that:

- The draft Cowra LEP 1990 (Amendment 14) does not prescribe a minimum lot size for agricultural purposes without a dwelling entitlement; and
- The approved subdivision applications in Cowra Shire since 1990 have resulted in a land bank of over 1300 lots. These range down in size from 40ha to less than 1ha spread over the local government area. The annual development rate is about 6 lots per year.

The Panel has not been persuaded that the continued subdivision of agricultural land (with a 40ha minimum lot size in dryland agricultural areas of the Shire), while Council prepares its new Cowra LEP, is essential or indeed desirable for the sustainable economic and social well-being of Cowra Shire. The decline of Cowra's fortunes, as referred to by those opposing larger minimum lot sizes on dryland agricultural lands, has not been arrested by the above-noted largely non-strategic subdivision going back to at least 1990.

The objectives of protecting the agricultural viability and productivity of rural areas and of providing for rural-residential development in Cowra Shire can both be achieved through sound strategic planning. The current Cowra LEP 1990 does not achieve these objectives. In this regard the Panel notes that the Department of Planning recognised the potential for the current unsatisfactory situation to occur in relation to excessive rural-residential development on agricultural land in its documentation to the then Minister in 1990 concerning Cowra LEP 1990.

The main objective for rural locations outside towns and villages in agricultural areas is to ensure the sustainability of agriculture. Government policies now reinforce this objective. Cowra LEP 1990 is sadly deficient in relation to the protection of agriculture as its objectives also include the provision of rural residential development. In traditional agricultural areas these objectives are in many cases antagonistic to each other. The lack of strategic planning in the rural areas of Cowra Shire has exacerbated the situation as the level of subdivision was not effectively controlled by Council, in part due to the legal standing of Cowra LEP 1990. This was aided by Council's then understanding of certain clauses in Cowra LEP 1990 relating to the agricultural classification of land zoned Rural 1(a) and which is not legally sustainable.

***Intensive Agriculture***

The suggested minimum lot size for intensive agriculture with a dwelling entitlement generally ranged from 10ha to 40ha. Council, Department of Planning, Department of Primary Industries and some community members support 40ha. Others in the community argue for a smaller minimum lot size, some suggesting 5 or 10ha. A development application for subdivision for intensive agriculture must include proof of a secure water supply (which is difficult for Lachlan River lands due to earlier unsustainable water allocations).

The basis of the argument of those supporting a lot area considerably less than 40ha is that a smaller area could viably support some intensive agricultural pursuits. A smaller lot area would also allow young farmers to establish themselves for a reasonable capital outlay. Other submissions pointed out that it is not essential for a small agricultural enterprise to have a dwelling, in which case there is little restriction on the lot area able to be subdivided for an agricultural pursuit alone.

In arguing for a 40ha minimum lot size with dwelling entitlement for intensive agriculture, Department Of Primary Industries stated that:

> *The viticulture industry is an important industry to the area. However, the underlying issue is whether there is a real need for more subdivision to create sustainable intensive agricultural development opportunities. The need to protect larger size lots in order to provide industry diversity, meet the needs of other sectors of the market and allow for future needs is more pressing. Again a strategic planning process that reviews current lot and holding patterns and land use resulting from subdivision is a starting point.*
>
> *With expansion of grape growing in the region, 10 hectares is often the standard for commercial budgets and is widely accepted as the minimum commercial scale. However 10-15ha is generally the minimum area required to permit cost effective mechanisation and hence some efficiency of scale.*
>
> *40 hectares is recommended by NSW Department of Primary Industries as an appropriate subdivision area for intensive agriculture that may attract a dwelling entitlement. This area will allow for: buffers to property boundaries and water courses, shed and storage facilities, remnant or shelter vegetation, and physical constraints such as drainage lines, excessive slopes, unfavourable soils etc.*

In these circumstances, the Panel recommends an interim minimum lot area of 40ha for a dwelling entitlement for relevantly justified intensive agricultural development until Council has further assessed this matter using the relevant guidelines. Nevertheless, there may be a case for smaller intensive lots in specific areas and the Panel recommends further investigation be undertaken as part of the land use strategy.

***Panel's Summary Comments***

The Panel has reviewed the aims of Cowra LEP 1990 and the specific clauses relating to subdivision of Rural 1(a) lands, as well as noting how the provisions of Cowra LEP 1990 have been implemented and the resultant outcomes. It is clear to the Panel (and to many in the local community), that there have been, and still are, serious deficiencies in Cowra LEP 1990 and its application in relation to the protection of sustainable agricultural production while reasonably providing for rural residential development. Moreover, the evidence does not support a conclusion that relatively uncontrolled subdivision and rural settlement alone result in enhanced economic and social conditions or increased population, (it is more likely that sustainable employment opportunities are needed for this to occur). The Panel has no doubt that this situation needs to be rectified in the long term interests of the Cowra community as well as those of the State. A strategic approach to land use planning in Cowra Shire as is currently being developed by Council is therefore essential. Government policies are also relevant. They cannot be simply discounted (as appears to be assumed in a number of submissions) and replaced by the desires of some of the residents who seek greater subdivision potential, irrespective of the consequences for traditional agricultural activities.

The current planning instrument, Cowra LEP 1990, has aims to encourage settlement in rural areas, which if not well managed would continue to damage the long term sustainable agricultural value of rural lands adjacent to rural lifestyle development. That detriment has already been caused to the agricultural potential in a number of well documented cases is apparent to the Panel. Submissions to the Panel proffer a range of ways and arguments for improving the current situation, including:

- Maintaining Cowra LEP 1990 while the land use strategy is completed, and amending the LEP based on the findings of the strategy in consultation with the community;
- Amending Cowra LEP 1990 but still allowing subdivision in Rural 1(a) areas with a minimum lot size of 40ha, subject to rigorous merit determination of proposed subdivisions and ensuring good quality development occurs; and
- The making of Cowra LEP 1990 (Amendment 14).

The basic long term aim of Government in strategic land use planning in the Rural 1(a) zones of Cowra Shire is to protect and encourage sustainable agricultural production which the current Cowra LEP 1990 has not achieved. Council has acknowledged this requirement and is adopting a strategic approach to land use planning in the Rural 1(a) zone. The primary aim of Cowra LEP 1990 (Amendment 14) is to protect, in the interim, agricultural lands by restricting the level of inappropriate development of rural lands for lifestyle purposes in Cowra Shire. The Panel strongly supports the aims and general intent of Cowra LEP 1990 (Amendment 14) for the interim.

Although there is general support for the intent of Cowra LEP 1990 (Amendment 14), there is widespread dissatisfaction with the minimum lot sizes for a dwelling entitlement proposed in the Rural 1(a) zone, particularly with respect to dryland agricultural areas and to a lesser extent for intensive agricultural areas. It is one of the Panel's roles to recommend minimum lot sizes.

The Panel considers it instructive to note the land use planning position in other local government areas in the region (see Appendix 2). It can be seen from the Department of Planning's submission that practically all inland councils in NSW are either:

- Implementing new minimum lot sizes for rural subdivisions/dwellings which have been determined after strategic analysis; or
- Engaging in strategic analysis to determine new minimum lot sizes; or
- Acknowledging the need to review minimum lot sizes with impending Planning Reforms and new LEPs.

In determining its recommended interim minimum lot size for dryland agricultural areas in Cowra Shire the Panel has taken into account:

- Importance of sustainable agriculture in Cowra Shire;
- Potential for impact on development in Cowra Shire;
- State Government policies;
- Outcomes in regional local government areas where the minimum lot size is 100ha or less;
- Dwelling entitlements;
- Department of Primary Industries preliminary recommendation of 400ha;
- Department of Planning's preliminary recommendation of 300ha or greater;
- Council's adoption of 100ha;
- Council officers' recommendation of 300ha;
- Residents' recommendations of 400ha to less than 40ha;
- Supply and demand for lifestyle lots in Cowra Shire;
- Written and verbal submissions to the Panel; and
- Potential for restriction of landowners' privileges.

Overall, the community generally accepts that rural residential development in the Shire needs to be better managed as it is recognised there has been some sub-standard development approved. Many also support removal of the distinction between prime and non-prime agricultural land. There is however, significant opposition to the removal of perceived 'rights' which landowners strongly believe they now enjoy and which they state are very relevant to retirement and succession planning (legally there is no "right" for subdivision of land, or concessional lots, other than to make application to Council). In addition, a number of submissions contend that land development is important to Cowra as it results in increased population as residents move to the Shire to enjoy its special attributes.

The Panel has thoroughly reviewed the evidence it has relating to Cowra LEP 1990 (Amendment 14) and is satisfied that:

- A strategic approach to land use planning is essential to achieving the best long term sustainable outcome for the well-being of the Shire;
- Unless restrictions are placed on subdivisions in the rural areas of the Shire in the interim, traditional agriculture will continue to be detrimentally affected; and
- Subdivision of rural areas which is not strategic in nature is likely to reduce the long term sustainability of those areas due to land use conflicts with traditional agriculture as well as increasing Council's service costs.

The Panel also recognises that there are significant variations in topography and soil types across the Shire. The Panel notes that this fact is used to support argument for maintaining smaller minimum lot sizes in dryland agricultural areas as a "one size fits all" approach is claimed by some as not logical in these circumstances. Similar argument is used in other submissions to reject comparison with minimum lot sizes in nearby local government areas to the north and west of Cowra Shire. Furthermore, a number of these submitters argue that smaller farms can be more efficient agricultural producers than larger farms. These submissions generally support smaller minimum lot sizes (40ha or less) with merit assessment and good standards for development to overcome the issue of inappropriate development.

However, these submissions avoid in large part addressing the main reasons for Cowra LEP 1990 (Amendment 14) which are the long term preservation of sustainable traditional agriculture including minimising land use conflict, and controlling the number and dispersion of subdivisions on rural lands. Given the legal standing of Cowra LEP 1990 and its likely interpretation by the Land and

Environment Court, merit assessment under this LEP would be likely to provide only limited protection for agricultural lands. The Panel believes stronger controls are necessary and considers the overall approach in Cowra LEP 1990 (Amendment 14) is sound for the interim period while the land use strategy and new LEP are being prepared.

The Panel has not been convinced that restricting subdivision of Rural 1(a) land in the interim would stifle development in the Shire. The evidence indicates there is a considerable number and wide range of lot sizes and locations currently available in the Shire with only a low sustained development rate. The Panel is concerned that land values over the long term reflect sustainable land uses in the context of strategic land use planning. Relevant endorsed Government policies consider the rural lands in Cowra Shire should be protected for traditional agriculture.

Dispersed rural living, and especially as has been approved in Cowra Shire, is largely antagonistic to traditional agricultural practices. Depending on the minimum lot size with a dwelling entitlement the value of traditionally agricultural lands can be raised above its value for agriculture, and consequently may be at least partially lost to agricultural productivity as well as conflicting with adjacent agricultural pursuits. As noted earlier the Panel has not been convinced the contrary can be sustained based on the rather simplistic application of broad statistics relating to the comparison of farm numbers, farm sizes and the value of agricultural production since 1990.

Moreover, argument that the issues should be fully understood before any change is made to the minimum lot size ignores the reasons for the change and would result in the continuing inappropriate subdivision of rural lands in the Shire. It is also likely that many opposing Cowra LEP 1990 (Amendment 14) would remain dissatisfied with additional information that did not support their position.

In summary, a large number of residents of the Shire argue for maintaining a maximum lot size of 40ha but:

- Do not fully acknowledge the extent of land use conflict with the current relatively uncontrolled subdivision of Rural 1(a) land;
- Do not fully acknowledge the high service costs of dispersed rural settlement;
- Have an unrealistic understanding of Council's ability to control rural residential subdivision under the current provisions of Cowra LEP 1990;
- Do not offer solutions which are feasible to apply in the legal and social context of the relevant planning controls; and
- Substantially downplay the relevance of State Government policy.

Cowra LEP 1990 (Amendment 14) does not remove legal rights which landowners have acquired. It does however change the rules by which landowners can apply to subdivide their land in order to protect agricultural lands. It only affects Rural 1(a) lands and only in the interim. Land use options will be widely canvassed in developing the Cowra Land Use Strategy and everyone who wants to participate in the process will be able to do so. The new comprehensive LEP will then be the relevant legal instrument.

The Panel has reviewed all submissions it has received, taken into account relevant Government policies, heard parties present their arguments and viewed locations within Cowra Shire. Moreover, draft Cowra LEP 1990 (Amendment 14) is expressed as an interim plan. The Panel does not consider sustainable development in Cowra Shire will be detrimentally affected (due to the available supply of subdivided lots) while further assessment is carried out as part of Council's strategic planning to determine the minimum lot size for dryland agricultural areas with dwelling entitlements for any new Cowra LEP. This assessment should be based on the relevant Government guidelines and current local information.

The Panel recommends that Cowra LEP 1990 (Amendment 14) be made by the Minister as a matter of priority with the minimum lot area for a dwelling entitlement set at 400 hectares in clauses 12(3) and 17A(b).

Another concern raised in submissions involved the uncertainty in terms of the delay in implementing Cowra LEP 1990 (Amendment 14). Although the delay exists, and although it is unfortunate, it is a necessary product of the time required to effect such a significant change and the requirement, obviously, for public participation in that process. However, the Panel is adamant the amendment should not be deferred until the land use strategy is completed given the level of subdivision applications for rural lands and that the land use strategy and new LEP could take some time to finalise and implement. In circumstances where the clear gravitation towards acknowledgement of the need to consider ecologically sustainable development (ESD) and in particular intergenerational equity, the current position of the Council (100ha minimum lot size) or retention of a control which has the effect of prejudicing a valuable and non-renewable resource, is to ignore the need for inter-generational equity, one of the important aspects of ESD.

The draft Cowra LEP 1990 (Amendment 14) was exhibited with a 400 hectare minimum. Submissions were received in response to such a control, and a Section 68 report addressed such submissions. It would not appear necessary that the draft LEP be re-exhibited, notwithstanding the Council's decision to forward the draft LEP to the Minister with a 100 hectare minimum.

The Panel supports a minimum lot size of 40ha for intensive agriculture. It also recommends further detailed assessment be undertaken by Council in relation to the potential for niche agricultural pursuits to be developed on smaller lots in specified locations.

The Panel is satisfied that the other provisions in Amendment 14 are sound. These other provisions are generally supported by the Council, government agencies and many within the community. Although some sections of the community sought smaller lot sizes and/or retention of concessional lots, providing reasons as to why their position should be adopted (mainly linked to the number of objectors to the proposed changes), the Panel has not been persuaded by their arguments.

## TERM OF REFERENCE 2

**Identify and describe possible errors in the planning process, and particularly whether actions have been taken by the Council that contravened environmental planning instruments**

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This term of reference asks the Panel to identify and describe possible errors in the planning process, and particularly whether actions have been taken by the Council that contravened environmental planning instruments

Strictly speaking the term of reference would have required an exhaustive investigation into, generally, errors or potential errors in the planning process across all of the decisions of Council. The Panel though limited its inquiries to lands the subject of draft Cowra LEP 1990 (Amendment 14).

The issue of possible errors in the planning process was first raised in about 2004 following complaints from members of the public to the Department of Planning (in its previous designation) concerning decisions undertaken by the Council with respect to, in particular, subdivision of rural lands.

By the time of the appointment of the Panel inquiries and investigations had already commenced by the Department of Planning into such complaints, and the Council had cooperated in the provision of information relevant to such complaints.

Following the receipt of submissions called in relation to the Terms of Reference, and the provision of additional material by the Council as part of the information gathering process undertaken by the Panel, it became apparent that for a period of some six years between 1998 and 2004 some decisions had been made by the Council based upon interpretations of the relevant provisions of Cowra LEP 1990 which were arguably not available, or possibly incorrect.

In particular the decisions related to Rural 1(a) lands, and especially insofar as such lands were designated as "prime agricultural" lands.

As made, the Cowra LEP 1990 provided for minimum allotment sizes for subdivision of Rural 1(a) land, and minimum allotment sizes concerning existing dwellings and new dwellings in that zone. The minimum allotment sizes were different as a function of whether the land so zoned was designated as "prime agricultural land" or "non-prime agricultural land". From the time of its making until May 1998 the Cowra LEP 1990 provided that the differential designation was determined by resolution of the Council.

In May 1998 the Cowra LEP 1990 was amended to provide that the differential designation was to be determined by reference to a map prepared by the Department of Agriculture which classified land in certain ways, or otherwise as specifically notified to the Council.

Hence from about this time the fundamental basis for determining whether land was prime or not was for the first time to be determined by a body other than the Council.

The concept of that change is especially relevant once it is acknowledged that there is a marked difference in the development standard for lands which are zoned the same way, but are otherwise differently designated.

At the outset it is important to observe and acknowledge that the subdivision provisions of Cowra LEP 1990 are somewhat confusing and hence open to a variety of interpretations in terms of the controls for subdivision and the erection of dwelling houses. Consequently, in such circumstances, it is easy to see how the terms of the LEP are open to various interpretations without necessarily being incorrect.

Based upon the information provided to the Panel it would appear that errors occurred in the planning process between the period 1998 and 2004 in so far as the misapplication of the maps provided by the Department of Agriculture was concerned in relation to Cowra LEP 1990.

Firstly, as a general proposition such maps were at a scale which were inappropriate for application to specific lands, and they were not ground-truthed.

Secondly, in some instances only lands identified as "A1" and "A2" but not "A3" (all as required by the Department of Agriculture's definition of "prime agricultural land") were regarded by the Council as "prime" lands.

And thirdly, and most relevantly, it appears that some confusion existed between the cultural change-over from the old definition of prime agricultural land to the altered definition of prime agricultural land such that in some instances the land was effectively reclassified to "non-prime agricultural land" merely by the provision of an agronomist's report certifying that the designation of land by the Department of Agriculture was inappropriate.

In addition to these aspects, the Council itself also submitted to the Panel that it was concerned some versions of the Cowra LEP 1990 which were being utilised during the period 1998 to 2004 did not contain the definition of "prime agricultural land" that was incorporated into the Cowra LEP 1990 in 1998. If true, this would have been an error fundamental in nature. The effect of this would have been that the decision making process would have been a function of the agricultural classification of the land as dependent upon a resolution of Council. Whilst this self expressed concern by the Council is curious, it did not appear that the holding of the incorrect copy of the Cowra LEP 1990 was in fact the basis for the making of decisions during that period; there was an absence to any reference to resolutions of the Council relevant to the matter, and it was more probably the fact that decisions were being made as a function of the classification mapping by the Department of Agriculture.

More importantly is the fact that it appears that in applying the Cowra LEP 1990 in some instances only certain provisions of the LEP were being relied upon in order to determine the minimum allotment size for subdivision, and any coincident entitlement to the erection of a dwelling house. The approach of having failed to take into account all the provisions of the LEP relevant to the issues concerning a particular development application resulted in the determination in some cases of applications which on the face could perhaps be considered technically sound but which may not have actually taken into account all of the relevant provisions of the LEP.

Similarly, there was also some concern expressed as to the possibility that Community Title subdivisions were not subdivisions to which the currently relevant provisions of Cowra LEP 1990 applied.

Upon assessment of the various actual development applications (the subject of Term of Reference 3 below) it became apparent that possible errors in the application of Cowra LEP 1990 occurred shortly following Amendment 7 which effected the change to the definition of "prime agricultural land".

In the year following the making of that Amendment 2 development applications which related to prime agricultural land were lodged in respect of which a query was raised concerning that classification as evidenced in the Department of Agriculture's mapping. This query was raised by the Council directly with the Department of Agriculture which responded, in effect, by indicating that although the mapping indicated that the subject land is classified relevantly to render the land as

prime agricultural land, the Department of Agriculture noted that the designation was not necessarily appropriate in the circumstances of the then present case. The Department of Agriculture's response also, quite relevantly to the present Panel Report, urged a strategic planning approach at the Council planning level to determine lands which were appropriate to be retained for agriculture in the face of inappropriate settlement which caused fragmentation of agricultural land and land use conflicts.

That part of the response which operated to effectively circumvent the land mapping appeared to have created a precedent (in terms of approach by the Council) for many subsequent decisions with respect to development applications which were with respect to prime agricultural land but in respect of which a case was inevitably made that that classification was inappropriate. Hence, subsequently, many of the applications identified as being not in accordance with the terms of the Cowra LEP 1990 were applications with respect to prime agricultural lands but in relation to which submissions were made that such a classification was inappropriate.

The first of those that followed this initial communication with the Department of Agriculture were supported by an agronomist report that argued a case against the land being prime agricultural land on the basis of the inherent quality of the land. That submission was then used to effectively reclassify the land as a non-prime agricultural land, and hence notwithstanding the definition in the Cowra LEP 1990, the development application was determined as if the land was so classified, hence giving rise to the "possible error in the planning process".

The approach of the use of an agronomist report to argue a case against the prima facie prime agricultural land classification then continued throughout the relevant period. However, quite ironically the use of such reports evolved to the point at which rather than arguing a case concerning the classification of land on the basis of the land's inherent quality (for example soil, slope), in some instances the agronomist report argued in a quite paradoxical fashion that the land, whilst classified as prime agricultural, was not prime agricultural because it was " *no longer prime agricultural due to the expansion of North Cowra*" or (even more ironically having regard to the Panel's Terms of Reference) "*the land is a non prime because of its fragmentation from prime agricultural lands*".

Finally, in some instances there was evidence of a possible misinterpretation of the classification maps, but this instance was the exception rather than the rule.

Generally speaking to the extent that there may be said to have been planning errors these in the main are best described as a de facto reclassification of prime agricultural lands in circumstances where, at least initially, the correct classification was identified. In theory at least the definition of prime agricultural land may have been regarded as an appropriate basis for the utilisation of certain minimum subdivision controls but in the application of that definition by both the Council and the Department of Agriculture (as responsible for the land classification mapping), the constraint to those controls was effectively relaxed.

Throughout the relevant period, the assessment of applications concerning subdivision of these rural lands appears to have proceeded upon the assumptions created by the initial approach (to the Department of Agriculture) to effectively go behind the land classification maps. This situation was exacerbated by the fact that many applications for rural subdivision were lodged by, or supported by, the same applicant consultants. The subdivision decisions throughout this period were delegated to persons who in some instances were inexperienced. And finally, in the majority of cases the Council's files did not disclose any external objection to the development applications.

The combination of the early relaxation of the land use mapping, the continuity of assessment, decision-makers and applicant consultants, and the absence of any real objections or objectors resulted in the long period of possible planning errors and the number of development applications which fall for consideration under Term of Reference 3.

This approach had the effect of importing to prime agricultural land the significantly lower minimum subdivision allotment requirements that were applied to non-prime agricultural land.

These approaches appeared to have ceased from about September 2004 once the Council was questioned about its interpretation of the Cowra LEP 1990 upon complaint from the public concerning one of the more controversial development applications lodged during this period.

## TERM OF REFERENCE 3

**Identify and describe the nature and extent of planning consents given by the Council that may be uncertain.**

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As referred above, notwithstanding the apparent breadth of this Term of Reference, the Panel did not embark upon a process of assessment of all development consents given by Council, but rather only those relevant to the proposed amendment to the Cowra LEP 1990.

Based upon submissions from the Council, and based especially on the fact that the possible planning errors arose by reason of a change in the definition of prime agricultural land, as referred above, and that the construction of that definition was raised by the Department of Planning in about the end of 2004, the focus was given to decisions given with respect to Rural 1(a) lands during the period of 1998 to 2004.

During that period approximately 170 development applications relating to Rural 1(a) lands were lodged with the Council.

Approximately 100 of these developed applications related to land which fell within the classification of prime agricultural lands. The remaining 70 fell in the first instance within the non-prime agricultural lands classification.

Not all of the development applications were approved or refused, some of them being withdrawn by applicants prior to determination by the Council. This notwithstanding, only two development applications were actually refused by the Council (by resolution), and both of these decisions were made after the Department of Planning's initial correspondence with the Council in 2004 concerning the Councils interpretation of the Cowra LEP 1990 with respect to the Rural 1(a) lands.

Of the 100 or so development applications related to prime agricultural land some 35 were identified by the Council (Appendix 3), after it had undertaken a review (the nature of which the Panel is satisfied was undertaken in such a way so as to best identify planning consents which may be uncertain), as being possibly uncertain as a result of possible errors in the planning process as discussed above.

From these 35 development consents it was apparent, following further investigation, that three could not be said to be uncertain because the initial identification process had either incorrectly identified the land as prime, or failed to recognise the subdivision rights for concessional allotments appertaining to the relevant application.

The resulting development consents resulted in the creation of some 114 allotments that may be said to have been created outside the terms of the Cowra LEP 1990. The vast majority of these were allotments of a relatively small size and more suited to the subdivision standard for non prime agricultural lands. Some nine allotments were lots created around existing dwellings in respect of which an argument concerning their being encompassed in concessional allotments could be made. At least three allotments, whilst not supported by any apparent objection pursuant to the terms of State Environmental Planning Policy No. 1, were sufficiently close to the 40ha standard as to not warrant any further investigation.

The Panel undertook an assessment of these development applications with the candid assistance of, and submissions by, officers of the Council. The information sought by the Panel included relevant development applications and development assessment reports. Submissions were also made by assessing officers and delegates.

In many instances it was difficult to determine the actual basis for the decision which resulted in an apparent departure from the minimum subdivision standards in the Cowra LEP 1990. This was because the records kept, or the documents produced, did not include any assessment report or information relevant to that determination.

As may be expected as necessarily flowing from the basis upon which the decisions were made (as set out in Term of Reference 2 above), namely that there was a perceived ability to proceed to determine and grant development consents, notwithstanding the land classification, there were no instances of any formal applications pursuant to State Environmental Planning Policy 1, and only one instance in which it may be said that such an application was made in substance, if not in form.

As also reported with respect to Term of Reference 2 above, and on the basis of the further investigations undertaken by the Panel, the predominant basis for the granting of such consents appeared to be the de facto reclassification of land on a case-by-case basis resulting in approximately 30 development consents which may be said to bear legal uncertainty or irregularity. The Panel does not otherwise identify with more specificity those actual consents.

## TERM OF REFERENCE 4

**Consider and advise the Minister for Planning what actions the Government should take to address the issues arising from the first three terms of reference, particularly in relation to uncertainty of property rights and consents.**

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This Term requests advice concerning actions to address the first three Terms of Reference -

*Concerning Term of Reference 1:*

Insofar as Term of Reference 1 is concerned, for the reasons given in relation hereto the Panel recommends forthwith the making of Cowra LEP 1990 (Amendment 14) with a minimum standard for subdivision of Rural 1(a) lands in clauses 12(3) and 17A(b) of 400ha.

*Concerning Term of Reference 2:*

The making of Cowra LEP 1990 (Amendment 14) would have the effect, in addition, of reducing the ability to circumvent a classification of agricultural land to bring with it different minimum subdivision standards for certain lands zoned in the same way.

*Concerning Term of Reference 3:*

Action concerning development consents granted by the Council however brings with it far greater difficulties, legally, practically and in most cases emotionally.

Firstly, it is important to recognise that development consents are valid until declared otherwise by the Court.

Furthermore, insofar as consents were granted on the basis of a de facto reclassification of lands notwithstanding the express terms of the Cowra LEP 1990 of course it is open to be said at least prima facie that such consents are potentially invalid, or at the least uncertain.

If any action was to be taken to render invalid those consents then the basis of any such challenge must first be determined. That approach would require characterisation of the "error" as being one concerned with either a prohibition or a development standard as the relevant clauses are reflected in the Cowra LEP 1990. The Panel is of the opinion that such clauses are most probably development standards, the consequence of which is that the invalidity is perhaps arguably more difficult to establish, or possibly less patently fatal to the consent than where a prohibition is concerned.

This general approach notwithstanding, as reported above, most if not all of the relevant development consents appeared to have been devoid of any relevant objection pursuant to State Environmental Planning Policy 1. The fundamental basis therefore to the making of the decision may be said to have been lacking.

The Environmental Planning and Assessment Act 1979 (EP&A Act) provides, in section 101, for the "protection" of consents where public notice is given of their making. Such a publication operates to prevent any challenge to the granting of a development consent in proceedings brought more than three months after the publication. There are some judicial exceptions to this general rule.

In some instances the Council did give a section 101 notice for the consents.

However, complicating the issue further is the fact that during the relevant period of the granting of the identified consents the Council did not always publish development consents, and when it did, for

a certain period at least, the publication was not in accordance with section 101 of the EP&A Act. It appears that the practice of publishing development consents (and hence prima facie the prevention of challenges to them) commenced only from about 2002. The uncertainty concerning the effectiveness of the publications continued for publications made until about the end of 2004 when the public notices appear to have been made in accordance with the requirements of the EP&A Regulation.

Hence, even if action was thought appropriate to be undertaken with respect to the consents there is some question as to whether proceedings to set consents aside would be defeated by operation of section 101, even in instances where a section 101 notice was in fact given.

The three options available with respect to the consents in the event that action was considered appropriate to have them set aside are:

a. Legal proceedings to declare the relevant consents invalid; or
b. Director-General initiated revocation pursuant to section 96A; or
c. Validating legislation.

***Legal Proceedings***

For the reasons discussed above legal proceedings to seek to declare the relevant consents invalid are in the opinion of the Panel fraught with much difficulty.

This notwithstanding, and probably most persuasive though, is the fact that the majority of these consents have been acted upon with many of the lots created by the consents having been on-sold to parties unrelated to the application, or the process concerned with the determination of it. Some submissions received by the Panel were from persons who had purchased lots that were the subject of the uncertain consents.

This observation is relevant not only as part of the making of recommendations concerning these consents, and the decision to do something about them, but as part of this first option, namely, the legal proceedings. This is because even if proceedings were to reach the point of a finding that the consent was invalidly granted, inevitably the Court would be asked to decline to grant any relief to declare the consent as invalid on discretionary grounds. The Panel is unable to indicate what likely result would ensue, save that it would appear that such an application would be likely to be heard sympathetically by the Courts.

One of the submissions made to the Panel suggested that if mistakes have been made in the past then they should be left alone and the future should ensure that the mistakes are not repeated. The Panel agrees with this submission.

To the extent that lots have been created and sold, the Panel does not recommend any action take place. It appears (obviously) that the prejudice to the individual lot owner would far outweigh any benefit to be derived.

Notwithstanding this general position, it is recommended that efforts be undertaken to urge the Council to republish section 101 notices with respect to all of the relevant consents so that whatever protection may be afforded to the consents by operation of the EP&A Act it is not defeated either because of a failure to have made a section 101 publication, or because it is defective in form.

With respect to one of the identified consents it is apparent that the Department of Planning and the Council have already commenced action to seek to have the landowner, in a cooperative way, surrender the consent. The Panel recommends that such efforts continue.

***Director-General Initiated Surrender***

Insofar as the second option above is concerned (EP&A Act surrender), the Panel makes no recommendation either in favour or against that option, it being more related to the matter of policy.

This notwithstanding, the Panel would wish to observe that such a course is predicated upon having regard to a draft State Policy of a Regional Plan. There is no such document in the present case. A surrender may also be initiated by the Council, but again having regard to a draft local environmental plan.

Although there is a draft in the present case (that is Cowra LEP 1990 (Amendment 14)) it is dealing with a minimum subdivision standard. It may be difficult to argue that that is sufficient to engage section 96A of the EP&A Act, when the surrender is directed more to curing perceived "defects" with respect to the prior standard.

Additionally there is a right of appeal to the Land and Environment Court under section 96A(6) of the EP&A Act which may affirm, vary or cancel the instrument of revocation. So the process is further uncertain.

All that notwithstanding, if a consent is actually surrendered compensation for expenditure incurred pursuant to the consent is payable under section 96A(7) of the EP&A Act.

For all of these reasons the Panel does not recommend that any action be taken pursuant to this course.

***Validating Legislation***

The third option available is the enacting of legislation to validate the consent about which uncertainty has been raised.

Beyond the move towards certainty achievable by implementing the recommendations set out as part of option (a) above, this course would remove any residual uncertainty.

The Panel considers that such a course is entirely a matter of Government policy and makes no further comment in relation to it.

## TERM OF REFERENCE 5

**Advise on the appropriateness of current actions being taken by Cowra Shire Council (including its preparation of its land use strategy) in supporting the orderly and sustainable development of the Cowra area.**

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In summary, recent actions taken by Cowra Shire Council to support the ongoing, orderly and sustainable development of the Cowra area have been:

- Restructuring of the Environmental Services Department of Council (see below);
- Suspending all staff delegated authority (October 2004) in relation to subdivisions of land zoned Rural 1(a) under Cowra LEP 1990;
- Undertaking a review of development control plans, standards, policies and forms related to development assessment processes, including preparing a Code of Planning Practice;
- Resolving to prepare (20 December 2004) draft Cowra LEP 1990 (Amendment 14) to control inappropriate rural residential development in the Rural 1(a) zone in the interim period while the Cowra Land Use Strategy and LEP are being prepared;
- Taking into considerations draft Cowra LEP 1990 (Amendment 14) in determining development applications lodged after 4 March 2005;
- Resolving to undertake (24 October 2005) the Cowra Land Use Strategy and preparation of a new comprehensive local environmental plan; and
- Appointing consultants (November 2005) to prepare the Cowra Land Use Strategy and new comprehensive LEP.

Council has also commenced the Cowra Shire Section 94 Contributions Review, Cowra Shire Heritage Study and Cowra/Gooloogong Floodplain Risk Management Study. It has also resolved to prepare an overarching Futures 30 Strategic Growth Plan for the Shire.

Council's submission to this term of reference expands on the above summary:

> *The Environmental Services Department has been re-structured to maintain a full time team of three Environmental Health and Building Surveyors, one Town Planner and a Trainee Town Planner. This professional team is supported by the Director – Environmental Services, Environmental Services Coordinator and the Development Control Clerk. Most positions have been newly created in the restructure process to provide greater focus on service delivery and accountability of key responsibilities.*
>
> *The Department currently also accounts for the contract employment of consultancy firm(s) to assist with the preparation of the Cowra Shire Land use Strategy, a part-time Heritage Adviser to complete the Cowra Shire Heritage Inventory and delivery of heritage advice/service to Council and a specialist planning consultant to prepare a review of section 94 contributions.*
>
> *The Environmental Services 05/06 budget underpins a return to core business of development and building control, pollution control, environmental management, regulation, compliance and advice. Over the next twelve months it is intended to review and further improve the majority of Council policies and processes relating to the main functions of Environmental Services. The overall focus of the department will be to deliver on accurate, quality advice and service through on-going review of its policies and processes and client service levels.*

*New Development Application forms and a DA Guide have been developed to ensure that development applications submitted with Council are properly completed and include all of the information required by the Environmental Planning and Assessment Act 1979 to properly process the applications.*

*To improve on the quality of development applications submitted to Council and advice being given to developers, Environmental Services have initiated a "Preliminary DA Lodgement Process", whereby proponents can access Council's senior team of multi-disciplinary assessment staff to provide preliminary comments on new development proposals, the information that needs to be considered in the preparation of applications and a general outline of the likely DA process relevant to the proposal. This process is achieving better quality applications and a smoother, quicker DA process.*

*Environmental Services have completed a comprehensive review of all of its procedures relating to the processing of development applications. A DA Procedures Manual has been developed and documents Council's systematic approach to process reform and maintaining consistency in the assessment and determination of development applications.*

*On a weekly basis all new development applications are referred to an Initial Check Meeting (ICM) where the applications are reviewed by the Team Leader – Development Services, Team Leader – Technical Services Design, Town Planner and Development Services Clerk. The ICM aims to highlight the main issues relevant to the assessment of each new application as well as map-out the general processing strategy for the application. The ICM is also used as a forum to check status of development applications in progress and discuss any new problems or issues associated with the processing of a development application.*

*Similar procedures have been or are in the process of being prepared for the processing of Planning Certificates, Construction Certificates, Drainage Diagrams, Notices and Orders.*

*The Council has also prepared a Code of DA Practice which has been placed on public exhibition for comment. As previously indicated, Council would welcome the Independent Review Panel to comment on the draft Code of DA Practice prior to its final aDepartment of Planningtion.*

*Funding has been provided for the preparation of the Futures 30 Strategic Growth Plan for Cowra Shire that will plan the future of Cowra 30 years into the future. Planning a Futures 30 Search Conference is currently underway, to be held in late March 2006 to engage with the local community and develop a strategic plan for the Shire (30 year vision).*

*Futures 30 will be underpinned by the Cowra Shire Land use Strategy that will be developed throughout 2006. The Land use Strategy has State government support and will focus on working with the community to develop sound planning policy direction under a new local environmental plan to apply to Cowra Shire.*

*Council is also conducting a comprehensive review of section 94 Contributions Plans and will introduce a new system of contributions planning in line with the completion of the Cowra Shire Land use Strategy and resultant new local environmental plan.*

*All Development Controls Plans that apply in the Cowra Shire are also being reviewed on a priority basis. The DCP review will largely be driven by the findings and outcomes of the land use strategy. However, Environmental Services is currently focusing on the*

*development of the following "generic based plans" that are not necessarily dependent on the outcomes of the land use strategy:*

- *Erosion and Sediment Control DCP.*
- *Contaminated Land Development Control Plan.*
- *Complying Development Control Plan.*
- *Exempt Development Control Plan.*
- *DA Notification and Advertising Development Control Plan.*

*Heritage management matters will be integrated into the Cowra Shire Heritage Study, with a qualified heritage advisor providing a limited service to the Council and the community on a part-time basis.*

*Subject to time constraints and resources in this years budget, Environmental Services is planning to undertake an audit of rural dwelling-houses to determine any illegal and/or non-complying dwellings and structures on rural land.*

*The Council has obtained and will continue to obtain legal advice to assist it in its administration of planning in its area.*

*The next two years will be a very challenging and exciting period for land use planning in Cowra Shire and Council is confident that it is moving forward and in the right direction to bring about the orderly and sustainable development of the Cowra Shire.*

The above actions taken by Council have the general support of the Department of Planning and Department Of Primary Industries. They are generally supported by the community, other than provisions in draft Cowra LEP 1990 (Amendment 14) which restrict subdivision with dwelling approval in the Rural 1(a) zone.

***Panel's Comments***

The Panel considers the actions being taken by Council as noted above are comprehensive. When professionally implemented they would assist in arresting inappropriate rural residential development in the Rural 1(a) zone in the interim period while the Cowra Land Use Strategy and new LEP are being prepared. Moreover, the land use strategy provides a transparent and consultative framework to reconcile competing land use demands and to facilitate the orderly and sustainable development of the Cowra Shire. Thorough preparation of a land use strategy supports good planning practice and informs sound land use decisions. In this regard it should include a comprehensive assessment of the minimum lot size for the Cowra Shire for dryland agriculture, a major bone of contention in the local community.

The Panel emphasises the need for ongoing professional implementation of Council's actions. Having reviewed some of the more recent assessments of development application for subdivisions (2005), the Panel is satisfied a high level of professionalism is now being applied to the assessments. The Panel acknowledges the reservations raised by a number of parties in this regard as to the merit assessments undertaken by Council officers and subsequently adopted by Council. However, the Panel does not view its terms of reference as relating to the weighting of the various environmental planning aspects of each individual development application unless a significant level of unreasonableness is evident. The Panel has not been persuaded that such unreasonableness has influenced Council's recent decisions in development applications which parties have referred to the Panel.

The Panel also reviewed Council's technical brief for development of the Cowra Land Use Strategy and LEP as well as Council's submission to the Panel. The technical brief is thorough and requires community consultation which the Panel strongly supports. The Panel encourages the community to

fully participate in the consultation initiatives being provided by Council in relation to strategic planning issues. Both the Director-Environmental Services and representatives of the appointed consultant are well qualified and experienced professionals with sound environmental planning backgrounds. The Panel is satisfied with the standard of the personnel managing the Cowra Land Use Strategy and new LEP.

The Panel has concluded that the current actions being taken by Cowra Shire Council to ensure the orderly and sustainable development of the Cowra area are appropriate subject to periodic independent review. To ensure that a high level of professionalism is maintained by Council in implementing its above listed actions the Panel recommends that Council commission an independent review of its rural subdivision assessments and decisions, including those made under delegated authority, by an appropriately qualified person. The Panel recommends that an initial independent review occur within two years of the new LEP being gazetted and then once in each term of office.

## TERM OF REFERENCE 6

**Recommend any other appropriate actions that would promote improved land use planning for the Cowra local government area.**

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The Panel has reviewed the submissions made by a number of councillors, Council staff and representatives of the appointed planning consultant as well as reviewing community submissions to the Panel and hearing from local residents. As a consequence, the Panel believes it has a reasonable understanding of the significant and relevant issues for land use planning in the Cowra Shire. Many of the issues have been canvassed in the preceding five terms of reference. The Panel has reviewed all the evidence submitted and has identified other appropriate actions that would promote improved land use planning for the Cowra local government, in addition to those recommended in the preceding five terms of reference area, including:

- Enforcing building, environmental and service standards as well as conditions of consent for rural residential type development including review of the provision for "temporary" accommodation.
- Assessing the agricultural and social viability of providing some limited areas for intensive agriculture (with dwelling entitlement) on lots less than 40ha in specified areas in the new LEP.
- Providing a wider range of lot sizes in rural residential areas.
- Generally locating rural residential areas in the vicinity of established towns and villages on poorer quality agricultural land.
- Reviewing contribution charges for rural residential areas to ensure Council can adequately provide the relevant services.
- Mapping of important areas of vegetation and riverine ecology.
- Identifying areas which are more suited for specific enterprises and consider minimum lot sizes accordingly.
- Considering the need for more than one dryland agriculture minimum lot size depending on the general land types which range from river flat lands to those at higher altitudes.
- Ensuring clear wording in conditions of consent.
- Developing a guideline for what constitutes intensive agriculture, and controls for such development for insertion in the LEP.
- Taking into account the existing distribution of small lots in and around the towns and villages in the Shire in assessing the potential for rezoning land.
- Considering alternative land use zoning for lands with little or no potential for sustainable agriculture.
- Providing clear and timely guidance when requested by the owner as to whether a building entitlement is attached to an existing lot and referring the owner to documents which set out what conditions apply or are likely to apply.
- Establishing an independent review Panel to assess 'worthwhile' development which falls outside of the LEP requirements but to which SEPP 1 could apply.
- Developing a short education program relating to planning procedures and policies for Councillors, in conjunction with the Department of Planning.

# APPENDICES

# Cowra Local Environmental Plan 1990 (Amendment No. 14)

under the

## Environmental Planning and Assessment Act 1979

I, the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), make the following local environmental plan under the *Environmental Planning and Assessment Act* 1979. (DUB0108100-1)

DIANE BEAMER, M.P.,
Minister Assisting the Minister for Infrastructure
and Planning (Planning Administration)

# Cowra Local Environmental Plan 1990 (Amendment No 14)

under the

Environmental Planning and Assessment Act 1979

## 1 Name of Plan

This plan is Cowra *Local Environmental Plan* 1990 *(Amendment No 14)*.

## 2 Aims of plan

The aim of this plan is to amend the Cowra Local Environmental Plan 1990 by making various amendments to the settlement provisions applying in the rural areas of Cowra Shire. Specifically the plan aims to:

(a) provide security and certainty for all forms of agriculture to facilitate optimal management, diversification opportunities and farm expansion, and

(b) minimise the potential for land use conflict between agriculture and settlement by requiring new dwellings to be ancillary to agricultural use, and

(c) minimise the fragmentation and loss of agricultural land, and

(d) reduce the uncoordinated demand for roads, infrastructure and services upon the wider community that can be caused by inappropriately located settlement for lifestyle purposes, and

(e) enhance the natural resource outcomes associated with sustainable management of rural lands, and

(f) minimise settlement of rural areas for lifestyle purposes and encourage such development to be located after broad strategic land use assessment and future amendments to this plan.

## 3 Land to which plan applies

This plan applies to all land within the local government area of Cowra.

## 4 Amendment of Cowra Local Environmental Plan 1990

Cowra *Local Environmental Plan 1990* is amended as set out in Schedule 1.

## 5 Applications made before (insert date of exhibition)

**Applications made before (insert date of exhibition)**

This plan does not apply to or in respect of a development application that was made before (insert date of exhibition), being the date of public exhibition of the draft plan.

## Schedule 1 Amendments

**[1] Clause 2 Aims, Objectives etc**

Omit Clause 2 (a).

Insert instead:

2(a) in relation to the rural needs of the Shire:

(i) to encourage and preserve all forms of agriculture, and

(ii) to preserve agricultural land for all forms of agriculture, and

(iii) provide greater security and certainty for all forms of agriculture to facilitate optimal management, diversification opportunities and farm expansion, and

(iv) minimise the potential for land use conflict between agriculture and settlement by requiring new dwellings to be ancillary to agricultural use, and

(v) minimise the fragmentation and loss of agricultural land, and

(vi) reduce the uncoordinated demand for roads, infrastructure and services upon the wider community, and

(vii) improve the natural resource outcomes associated with sustainable management of rural lands, and

(viii) minimise settlement of rural areas for lifestyle purposes and encourage such development to be located after broad strategic land use assessment and future amendments to this plan, and

(ix) subject to subparagraph (i), to provide for other types of development appropriate in rural zones, particularly tourist oriented and employment generating development, and

(x) to ensure mineral resources and energy generation potential are not sterilised by competing land uses.

**[2] Clause 5 (1) Interpretation**

Omit the definition for ***prime agricultural land*** from 5(1).

Insert in alphabetical order:

***sustainable natural resource management*** means ensuring that the health, diversity and productivity of the nation's natural resources are maintained or enhanced for the benefit of future generations through the conservation of biological diversity and the integrity of ecosystems.

**[3] Clause 9 Zone objectives and development control table**

Omit item 1 of the matter relating to Zone No 1(a) Rural Zone in the table to the clause.

Insert instead:

1 **Objectives of zone**
The objectives of this zone are:

(a) to promote sustainable agriculture, and

(b) to preserve agricultural land, and

(c) to provide greater security and certainty for all forms of agriculture to facilitate optimal management, diversification opportunities and farm expansion

(e) to ensure settlement is ancillary to agriculture and does not result in inefficiencies due to reduction in holding size, land use conflict or fragmentation of agricultural land, and

(f) to ensure non-agricultural development is sited to avoid or mitigate impacts upon agriculture, avoid land use conflict and to conserve agricultural land as a resource, and

(g) to take into consideration the potential economic recovery of known mineral and extractive resources in the siting of development, and

(h) to provide for other types of development appropriate in rural zones, particularly tourist oriented and employment generating development within the capability of the land to support the development, and

(i) to recognise the value of agricultural land in providing and facilitating sustainable natural resource outcomes, and

(j) to ensure development in the rural area does not result in demand for the provision of infrastructure or services above those required to service the existing rural community.

**[4] Clause 10 Subdivision of land generally**

Omit Clause 10(2).

Insert instead:

10 (2) Land may be subdivided without development consent where the subdivision is for the purpose of:

(a) consolidation of allotments, or

(b) rectifying encroachments along boundaries of allotments, or

(c) adjusting the boundaries of allotments where an additional allotment is not created and where the adjustment

(i) does not facilitate the transfer of a second dwelling onto a separate allotment that is below the minimum area for the zone, and

(ii) ensures there is sufficient land within each allotment, on which a dwelling-house exists or could exist, for the satisfactory disposal of effluent on each allotment, and

(iii) ensures there is a separation (where possible) between the perimeter of dwelling-houses or dwelling-house sites and adjoining agricultural property boundaries of at least 150 metres on land in Zone No 1 (a)

**[5] Clause 12 Subdivision for the purposes of dwelling-houses in Zone No 1(a) on prime agricultural land**

Omit Clause 12.

Insert instead:

**12 Control of subdivision for agriculture in Zone No 1 (a)**

(1) This clause applies to land which is within Zone No 1 (a).

(2) Subject to sub-clauses 3 and 4, Council may consent to the creation of a vacant allotment of any area for the purpose of agriculture or intensive agriculture.

(3) The Council may consent to the creation of an allotment for the purpose of agriculture that is occupied or will be occupied by an ancillary dwelling-house only if the allotment has an area of not less than 400 hectares.

(4) The Council may consent to the creation of an allotment for the purpose of intensive agriculture that is or will be subject to irrigation requiring a water licence under the Water Act 1912 or Water Management Act 2000 and is occupied or will be occupied by an ancillary dwelling-house only if the allotment has an area of not less than 40 hectares.

**[6] Clause 13 Subdivision for the purposes of agriculture in Zone 1(a) on prime agricultural land**

Omit Clause 13:

Insert instead:

**13 Control of subdivision for permissible purposes other than agriculture or dwelling-houses**

(1) Despite clause 12, land in Zone No 1(a) may be subdivided to create an allotment of any area, either vacant or occupied by a dwelling-house that is ancillary to a use granted prior consent, subject to Council being satisfied that the allotment is being used or will be used for a purpose (other than agriculture, intensive agriculture or a dwelling-house) permitted on the land in that zone, but only if Council is also satisfied that:

(a) the size and purpose of the proposed allotment is consistent with the objectives of the zone, and

(b) the level of demand for the goods or services that are to be supplied from the allotment, and the extent to which that allotment is proposed to be used to meet that demand, justifies the creation of the allotment, and

(c) the purpose for which the allotment is to be used can meet sustainable natural resource management principles, and

(d) the creation of the allotment is unlikely to adversely affect the existing and potential capability of the adjoining and adjacent land to be used for other permissible purposes in that zone, and

(e) the allotment to be created and any subsequent development on the allotment is unlikely to have the effect of creating a demand for uneconomic provision of services by the Council.

**[7] Clause 14 Subdivision in Zone 1(a) on non-prime agricultural land**

Omit Clause 14.

Insert instead:

**Clause 14** Deleted

**[8] Clause 17 Dwelling-houses - Zones Nos 1(a) and 1(c)**

Omit Clause 17.

Insert instead:

**17 Dwelling-houses – Zone Nos 1(a) and 1(c) in general**

(1) Despite any other provision of this plan, Council may consent to the erection of a dwelling-house on land zoned 1(a) or 1(c):

(a) if Council is satisfied that a dwelling-house could have been lawfully erected on an allotment created in accordance with a consent granted before the appointed day, being an allotment on which a dwelling-house could have been erected immediately before the appointed day, or

(b) that comprises an allotment created for the purpose of a dwelling-house by a subdivision for which consent was granted under this plan.

**17A Dwelling-houses in Zone No 1(a)**

(1) The Council may Consent to the erection of a dwelling-house on land within Zone No 1 (a) only if:

(a) the land comprises a vacant existing holding, or

(b) the use of the dwelling-house will be ancillary to and necessary for use of the land for the purpose of agriculture or intensive agriculture, and is either:

(i) for the purpose of agriculture and the land is, or will be consolidated into, a single vacant allotment that has an area of not less than 400 hectares, or

(ii) for the purpose of intensive agriculture and the land is or will be subject to irrigation requiring a water licence under the Water Act 1912 or Water Management Act 2000 and the land is, or will be consolidated into, a single vacant allotment that has an area of not less than 40 hectares and a condition is imposed on that consent that prohibits the erection of a dwelling-house before the commencement of the use of the land for the purpose of that sustainable intensive agricultural activity.

**17B Dwelling-houses in Zone No 1(c)**

The Council may consent to the erection of a dwelling-house on land within Zone No 1 (c) only if:

(a) the land has an area of not less than 4,000 square metres and not more than 2 hectares, or

(b) the land comprises a vacant existing holding.

**[9] Clause 19 Development in Zone No 1(a) involving prime and non-prime agricultural land**

Omit Clause 19.

Insert instead:

**Clause 19** Deleted

**[10] Clause 21 Additional dwellings**

Omit Clause 21.

Insert instead:

**21 Additional dwellings**

The Council may consent to the erection of an additional dwelling-house on land within Zone No 1 (a) or 1 (c) (including the alteration of an existing dwelling-house to create 2 dwellings) where:

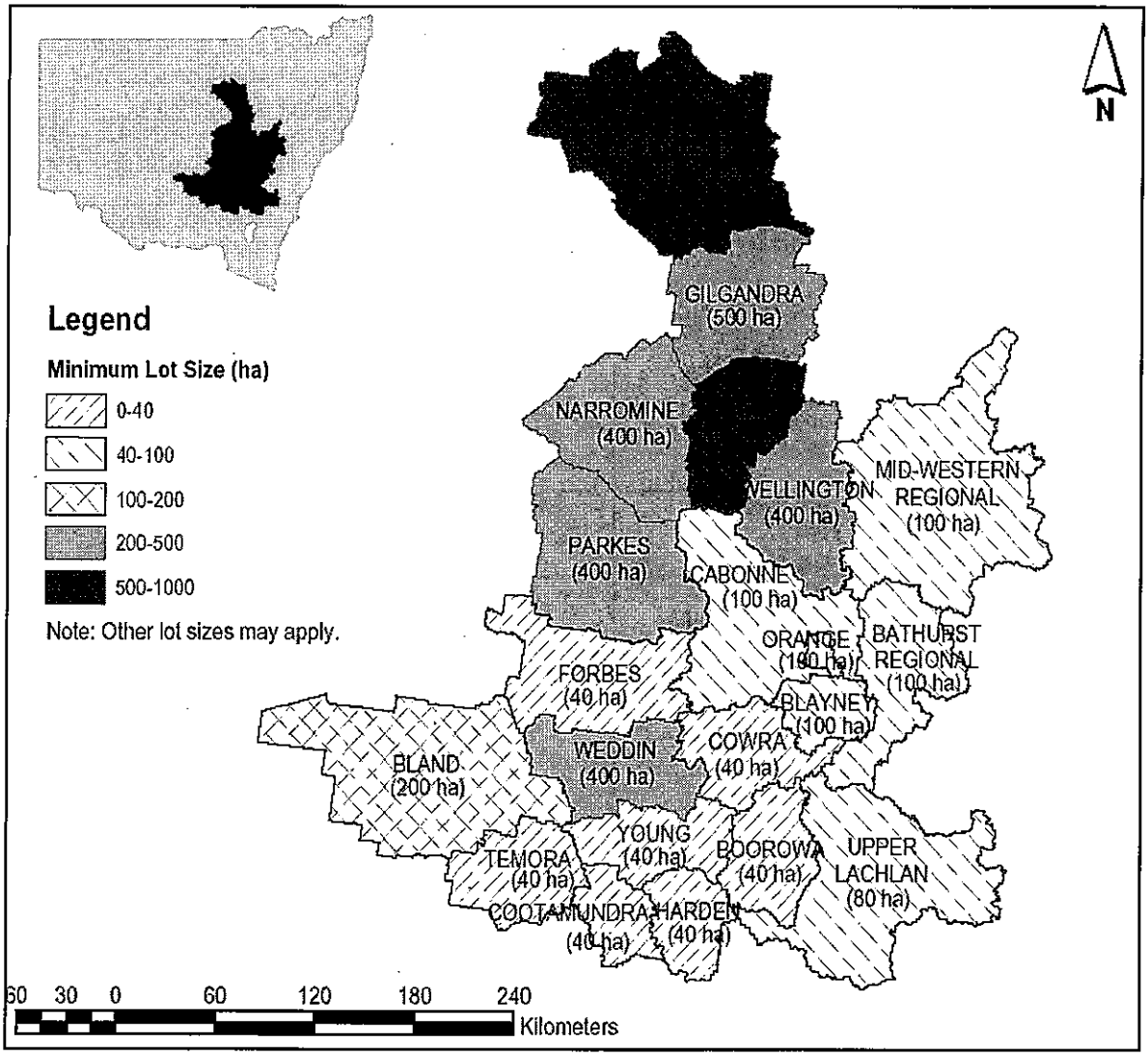
(a) in the case of land within Zone No 1 (a), the land is the minimum lot size specified in clause 17A, and

(b) the additional dwelling-house is located on the same allotment or parcel of land as the existing dwelling-house and the additional dwelling house will not be capable of being excised by way of transfer of a new or existing title, and

(c) the dwelling-houses share a common access to a public road, where practicable.

(d) Council is satisfied that satisfactory conditions and area exist to sustainably dispose of effluent from both dwelling-houses.

**APPENDIX 2**
**MINIMUM LOT SIZES FOR DWELLINGS ON DRY AGRICULTURAL LAND**



## Information to support map showing "Minimum Lot Sizes for Dwellings on Dryland Agriculture"

| LGA | LEP | Min Lot Size (ha) | Comments |
|---|---|---|---|
| Bathurst Regional (includes part former Evans) | Bathurst LEP 1997<br>Evans IDO No. 1 (gaz. 22/08/80) | 200<br>100 | Outdated LEP and IDO provisions being reviewed as part of the Bathurst Rural Strategy that has commenced with PRF. Minimum area will probably be increased. Review commenced by the former Evans Council prior to amalgamation was suggesting increase to 500ha. |
| Bland | Bland LEP 1993 (gaz. 17/12/93) | 200 | Outdated plan. Minimum lot size will be reviewed in accordance with policy prior to new LEP. |
| Boorowal | Boorowal IDO (gaz. 18/04/75) | 40 | Outdated IDO provisions currently being reviewed as part of Land Use Strategy and minimum lot size to be determined in accordance with policy. |
| Blayney | Blayney LEP 1998 (gaz 24/04/98) | 100 | Currently being reviewed in accordance with policy with Blayney, Cabonne and Orange Land Use Strategy under PRF. |
| Cabonne | Cabonne LEP 1991 (gaz. 16/08/91) | 100 | Currently being reviewed in accordance with policy with Blayney, Cabonne and Orange Land Use Strategy under PRF. |
| Coonamble | Coonamble LEP 1997 (gaz. 24/04/97) | 1000 | Will be reviewed in accordance with policy when LEP is reviewed. |
| Cootamundra | IDO No.1 – Cootamundra Shire Council (gaz. 1976) | 40 | Exhibited draft LEP with 280 ha min. lot size. |
| **Cowra** | **Cowra LEP 1990 (gaz. 23/11/90)** | **40** | **Outdated plan. Draft LEP No. 14 was exhibited with 400ha as minimum lot size. Staff recommended 300ha as an interim measure. Elected Council resolved for 100ha. Council did not consider policy environment when selecting 100ha.** |
| Dubbo | Dubbo LEP 1997 – Rural Areas (gaz. 20/03/98) | 800 | Minimum lot area based in strategic analysis undertaken in early 1990's at Council's own initiative. |
| Forbes | Forbes LEP 1986 (gaz. 5/12/86) | 40 | Outdated provisions being reviewed as part of a comprehensive land use strategy that has commenced with PRF in accordance with policy. |
| Gilgandra | Gilgandra LEP 2004 (gaz. 24/12/04) | 500 | 500ha will increase to 1000ha in 5 years unless alternative figure justified by forthcoming PRF Land Use Strategy. |
| Harden | Harden IDO (unknown gazettal date) | 40 | Outdated IDO – have received PRF to undertake new strategy and LEP. Minimum lot size will be reviewed in accordance with policy. |

| LGA | LEP | Min Lot Size (ha) | Comments |
|---|---|---|---|
| Mid Western (Mudgee) | Mudgee LEP 1998 (gaz. 21/08/98) | 100 | Independent consultant prepared a Land Use Strategy and recommended a minimum lot size of 400ha. Draft LEP with 400ha minimum has been exhibited. |
| Orange | Orange LEP 2000 (gaz. 12/05/2000) | 100 | Currently being reviewed in accordance with policy with Blayney, Cabonne and Orange Land Use Strategy under PRF. |
| Parkes | Parkes LEP 1990 (gaz. 14/12/90) | 400 | Parkes will be undertaking a PRF comprehensive land use strategy (has commenced) that will form the basis of a new LEP. Minimum lot size to be reviewed in accordance with policy. |
| Temora | Temora LEP 1987 (gaz. 05/06/87) | 40 | Outdated plan. Minimum lot size will be reviewed in accordance with policy prior to new LEP. |
| Upper Lachlan (Crookwell) | Crookwell LEP 1994 (gaz. 28/10/94) | 80 | Outdated plan. Minimum lot size will be reviewed in accordance with policy prior to new LEP. |
| Weddin | Weddin LEP 1995 (gaz. 05/07/02) | 400 | Minimum lot size will be reviewed in accordance with policy. Current LEP amendment with DoP to remove distinction between "prime" and "non-prime" agricultural land. |
| Wellington | Wellington LEP 1993 (gaz. 31/03/00) | 400 | Outdated plan. Minimum lot size will be reviewed in accordance with policy prior to new LEP. WSC seeking to rezone 1(a) to 1(c) Rural Small Holdings near urban area of Wellington to provide land for expected population growth with new Mid-Western Regional Correctional Centre. |
| Wentworth | Wentworth LEP 1993 (gaz. 07/05/93) | 10,000 | For comparison. |
| Young | Young LE Rural Plan 1993 (gaz. 10/09/93) | 40 | Outdated plan. Minimum lot size will be reviewed in accordance with policy prior to new LEP. |
| **Examples of other plans under review** | | | |
| Gunnedah | Gunnedah LEP (gaz. 25/09/98) | 200 | Independent review has recommended increase to 400ha. Draft LEP to contain 400ha. |
| Narrabri | Narrabri LEP 1992 (gaz. 24/12/92) | 100 | Draft LEP recommends increase to 800ha |
| Moree | Moree Plains LEP 1995 (gaz. 14/05/95) | 100 | Independent review has recommended increase to 1000ha |

Key: PRF – Planning Reform Funding Programme

## APPENDIX 3
## UNCERTAIN DEVELOPMENT CONSENTS IDENTIFIED BY COWRA SHIRE COUNCIL

| DA NUMBER | ZONING | NUMBER OF LOTS | DETERMINATION | DATE OF DETERMINATION | ADDITIONAL COMMENTS |
|---|---|---|---|---|---|
| 162/1998 | 1(a) Rural | 23 | Delegated Authority – Conditional Approval | 22 July 1998 | Prime agricultural land. Lots 14-23 created for dwelling house purposes (4000 sq m). Inconsistent with Clauses 12, 13 and 17 of Cowra LEP 1990. |
| 122/1999 | 1(a) Rural | 2 | Delegated Authority – Conditional Approval | 7 April 1999 | Prime agricultural land. Proposed Lot 30 (40.47ha) created for purpose of new dwelling house consistent with minimum development standard under Clause 12 and 17 of LEP. |
| 126/1999 | 1(a) Rural | 3 | File unable to be located. Consent document not found, however current property details confirm that subdivision has occurred. | Unknown | Prime agricultural land. Lots 1 and 2 (8.6ha and 26.3ha) not consistent with minimum 40ha development standard under clause 12 and 17 of Cowra LEP 1990. Lot 3 in excess of 40 hectares. |
| 211/1999 | 1(a) Rural | 2 | Delegated Authority – Conditional Approval | 11 June 1999 | Prime agricultural land. Proposed Lot 1 (4.825ha) created around existing residence not consistent with development standard under Clause 12 and 17 of LEP. Residual Lot in excess of 40ha. |
| 348/1999 | 1(a) Rural | 2 | Reported to Council – Conditional Approval granted | 14 October 1999 | Prime agricultural land. Proposed lot 1 (2.141ha) created for the purpose of a new dwelling house not consistent with minimum 40ha development standard under Clause 12 and 17 of LEP. |
| 358/1999 | 1(a) Rural | 2 | Reported to Environmental Planning Committee on 5 October 1999 – Conditional Approval | 18 October 1999 | Prime agricultural land. Proposed lot 1 (3.12ha) created to accommodate an existing dwelling house not consistent with development standard under Clause 12 and 17 of LEP. Proposed Lot 2 (4.97ha) created for the purpose of a new dwelling house not consistent with minimum 40ha development standard under Clause 12 and 17 of LEP. |
| 490/1999 | 1(a) Rural | 2 | Delegated Authority – Conditional Approval | 21 January 2000 | Prime agricultural land. 3.5ha lot created around existing residence not consistent with development standard under Clause 12 and 17 of LEP. Residual lot in excess of 40ha. |
| 63/2000 | 1(a) Rural | 2 | Delegated Authority – Conditional Approval | 3 March 2000 | Prime agricultural land. Proposed Lot 1 (23ha) for existing dwelling not consistent with Clause 12 and 17 of LEP. Proposed Lot 2 for intensive agriculture and ancillary dwelling hopuse not supported by evidence of intensive agriculture in accordance withg Clause 17(6) of LEP. |
| 99/2000 | 1(a) Rural | 3 | Delegated Authority – Conditional Approval | 27 April 2000 | Prime agricultural land. Proposed Lots 1-5 (from 7.765 to 31.124ha) created for purpose of dwelling houses not consistent with minimum 40ha development standard under Clause 12 and 17 of LEP. |

| DA NUMBER | ZONING | NUMBER OF LOTS | DETERMINATION | DATE OF DETERMINATION | ADDITIONAL COMMENTS |
|---|---|---|---|---|---|
| **101/2000** | 1(a) Rural | 14 | Delegated Authority – Conditional Approval | 19 April 2000 | Part prime and non-prime agricultural land. Proposed Lots 1-14 (range in size from 18 to 31ha) agronomist report provided certifying land as non-prime. Lots ranging from 20ha to 30ha created. Incorrect interpretation of Clause 12, 14, 17 and 19 of the LEP. |
| **200/2000** | 1(a) Rural | 4 | Delegated Authority – Conditional Approval | 20 July 2000 | Prime agricultural land. Community title subdivision creating 3 development lots for new dwelling houses less than 40ha. Incorrect interpretation of Clause 12 and 17 of LEP. |
| **254/2000** | 1(a) Rural | 4 | File unable to be located. Consent document not found, however current property details confirm that subdivision has occurred. | Unknown | Prime agricultural land. lots 1,2 and 3 (2ha) and 3 (4.9ha) created for dwelling house purposes not consistent with development standard under Clause 12 and 17 of LEP. |
| **306/2000** | 1(a) Rural | 3 | Delegated Authority – Conditional Approval | 27 October 2000 | Prime agricultural land. Proposed lots 2 (35ha) and 3 (4.9ha) created for dwelling house purposes not consistent with minimum 40ha development standard under Clause 12 and 17 of LEP. |
| **42/2001** | 1(a) Rural | 14 | Delegated Authority – Conditional Approval | 20 February 2001 | Part prime and non-prime agricultural land. Proposed Lots 1-14 (approx 4ha each) created for dwelling house purposes Incorrect interpretation of Clause 12, 17 and 19 of Cowra LEP 1990. |
| **84/2001** | 1(a) Rural | 2 | Delegated Authority – Conditional Approval | 7 May 2001 | Prime agricultural land. Proposed Lot 1 (11.075ha) created for purpose of dwelling house not consistent with minimum 40ha development standard under Clause 12 and 17 of LEP. Residual Lot 2 is 84.734ha. |
| **146/2001** | 1(a) Rural | 2 | Delegated Authority – Conditional Approval | 3 July 2001 | Prime agricultural land. Proposed Lot 1 (3.226ha) not consistent with minimum 40ha development standard under Clause 12 and 17 of LEP. Residual Lot 2 is 125.717ha. |
| **149/2001** | 1(a) Rural | 2 | Delegated Authority – Conditional Approval | 3 July 2001 | Prime agricultural land. Proposed Lot 1 (2.744 ha) created for purpose of dwelling house not consistent with minimum 40ha development standard under Clause 12 and 17 of LEP. Residual Lot 2 is 47.183ha. |
| **22/2002** | 1(a) Rural | 2 | Delegated Authority – Conditional Approval | 6 February 2002 | Prime agricultural land. Proposed Lots 1 (5ha), 2 (26ha) and 3 (36ha) created for purpose of dwelling houses not consistent with minimum 40ha development standard under Clause 12 and 17 of LEP. One lot in excess of 40ha. |
| **178/2002** | 1(a) Rural | 3 | Delegated Authority – Conditional Approval | 9 July 2002 | Prime agricultural land. Proposed Lots 1 (10ha), 2 (8ha) and 3 (21ha) created for purpose of dwelling houses not consistent with minimum 40ha development standard under Clause 12 and 17 of LEP. Agronomist report provided. |

| DA NUMBER | ZONING | NUMBER OF LOTS | DETERMINATION | DATE OF DETERMINATION | ADDITIONAL COMMENTS |
|---|---|---|---|---|---|
| 183/2002 | 1(a) Rural | 5 | Delegated Authority – Conditional Approval | 21 June 2002 | Prime agricultural land. Proposed Lot 8 (35ha), created for purpose of dwelling house not consistent with minimum 40ha development standard under Clause 12 and 17 of LEP. |
| 295/2002 | 1(a) Rural | 3 | Delegated Authority – Conditional Approval | 16 October 2002 | Prime agricultural land. Proposed Lot 1 (37.03ha), created for purpose of accommodating the existing dwelling house not consistent with minimum 40ha development standard under Clause 12 and 17 of LEP. No SEPP1 objection used |
| 104/2003 | 1(a) Rural | 2 | Delegated Authority – Conditional Approval | 29 May 2003 | Prime agricultural land. Proposed Lot 1 (2 ha) created for purpose of the erection of a new dwelling house not consistent with minimum 40ha development standard under Clause 12 and 17 of LEP. Proposed Lot 2 (32ha) residue not consistent with minimum 40ha development standard under Clause 12 and 17 of LEP. |
| 136/2003 | 1(a) Rural | 2 | Delegated Authority – Conditional Approval | 30 June 2003 | Prime agricultural land. Proposed Lot 1 (2 ha) created for purpose of the erection of a new dwelling house not consistent with minimum 40ha development standard under Clause 12 and 17 of LEP. Proposed Lot 2 (11ha) RATU that no dwelling-house be erected. |
| 183/2003 | 1(a) Rural | 4 | Delegated Authority – Conditional Approval | 17June 2003 | Prime agricultural land. Proposed Lots 2 & 4 meet the minimum 40ha standard. Proposed Lots 1 (38.40ha) & 3 (39.47ha) not consistent with minimum 40ha development standard under Clause 12 and 17 of LEP. |
| 193/2003 | 1(a) Rural | 2 | Delegated Authority – Conditional Approval | 26 June 2003 | Prime agricultural land. 2 ha lot created for purpose of the erection of a new dwelling house not consistent with minimum 40ha development standard under Clause 12 and 17 of LEP. |
| 206/2003 | 1(a) Rural | 7 | Delegated Authority – Conditional Approval | 9 July 2003 | Prime agricultural land. Community title subdivision. Lots 2, 3, 5, 6 & 7 (2ha) created for new dwelling house purposes. Lot 4 (23.6ha) created around existing dwelling house. Agronomist report provided. Not consistent with minimum 40ha development standard under Clause 12 and 17 of LEP. |
| 267/2003 | 1(a) Rural | 2 | Delegated Authority – Conditional Approval | 17 September 2003 | Prime agricultural land. Proposed Lot 1 (15.138ha) created for the purpose of new dwelling house not consistent with minimum 40ha standard in accordance with clause 12 and 17 of the LEP. |
| 323/2003 | 1(a) Rural | 2 | Delegated Authority – Conditional Approval | 1 October 2003 | Prime agricultural land. Proposed Lot 1 (2ha) and Lot 2 (2ha) created for the purpose of new dwelling house not consistent with minimum 40ha standard in accordance with clause 12 and 17 of the LEP. |
| 349/2003 | 1(a) Rural | 2 | Delegated Authority – Conditional Approval | 6 November 2003 | Prime agricultural land. Proposed Lot 100 (13.4ha) and Lot 2 (2ha) created for the purpose of new dwelling house not consistent with minimum 40ha standard in accordance with clause 12 and 17 of the LEP. |

| DA NUMBER | ZONING | NUMBER OF LOTS | DETERMINATION | DATE OF DETERMINATION | ADDITIONAL COMMENTS |
|---|---|---|---|---|---|
| **33/2004** | 1(a) Rural | 3 | Delegated Authority – Conditional Approval | 2 June 2005 | Prime agricultural land. Proposed Lot 2 (2ha) created for the purpose of new dwelling house not consistent with minimum 40ha standard in accordance with clause 12 and 17 of the LEP. Proposed Lot 1 (6ha) tied with Lot 2 for agricultural purposes with RATU. |
| **73/2004** | 1(a) Rural | 3 | Delegated Authority – Conditional Approval | 19 April 2004 | Prime agricultural land. Proposed Lot 2 (2ha) created for the purpose of new dwelling house. Lot 3 in the plan is 1.54ha. Non-compliant. |
| **96/2004** | 1(a) Rural | 3 | Delegated Authority – Conditional Approval | 5 May 2004 | Prime agricultural land. Proposed Lot 1 (30.14ha) created for the purpose of accommodating an existing dwelling house non-compliant with clause 12 and 17 of LEP. Lots 2 & 3 are in excess of 40ha. |
| **132/2004** | 1(a) Rural | 3 | Delegated Authority – Conditional Approval | 21 June 2004 | Prime agricultural land. Proposed Lot 2 (2ha) created for the purpose of new dwelling house not consistent with minimum 40ha standard in accordance with clause 12 and 17 of the LEP. Agronomist report provided. |
| **185/2004** | 1(a) Rural | 22 | Delegated Authority – Conditional Approval | 12 August 2004 | Prime agricultural land. Community Title subdivision of 1(a) Rural zoned land into 22 residential sized allotments not consistent with development standards under clauses 12 & 17 of the LEP. |
| **250/2004** | 1(a) Rural | 4 | Delegated Authority – Conditional Approval | 27 July 2004 | Prime agricultural land. Proposed Lots 1 (2ha), 3 (2ha) and 4 (2ha) created for the purpose of new existing dwelling houses non-consistent with minimum lot size of 40ha under clause 12 and 17 of LEP. |

## APPENDIX 4
## LIST OF SUBMISSIONS

1. Cowra Shire Council
2. Department of Planning
3. Department of Primary Industries
4. Abacus Planning
5. The Hon Ian Armstrong
6. James Ashton
7. Rodney James Attwood
8. Councillor Ian M Brown
9. Councillor Tim Bush
10. Brett Butler
11. Chambers Pastoral
12. David J Cooper
13. Cowra Crest Hotel
14. Cowra Rural Strategy Group
15. CPC Land Development Consultants Pty Ltd
16. Cranky Rock Road Action Group
17. Rev John and Christine Croudace
18. David Bigg Accountancy Pty Limited
19. Fisher Bus Service
20. Garden and Montgomerie Solicitors
21. Roger Patrick and Letitia Garland
22. V Harris
23. Harvey Farming
24. Hayman Pastoral Co.
25. Noel Honeybrook
26. James N Keady
27. Colleen Langfield

28. David Lanham
29. Grace Lanham
30. J N Mallon
31. Sue Markham
32. Leonie Martin
33. Lindsay & Sue Maynes
34. D I McClure
35. Wayne D McDonald
36. JR & RJ Pastoral Co Pty Ltd
37. Robert McKeown
38. Kendall and Diane McMaster
39. Allan Middleton
40. Dr W A Muggridge
41. Michael and Patricia Noble
42. Christine Norton
43. R & R Picker
44. Ray and Karen Rhodes
45. V & V Toohey and S & J Toohey
46. E Varrone
47. Shane Veney (prepared by Garden and Montgomerie solicitors)
48. Rob and Diana Waddell
49. Lynette Wanless
50. Robbie Watt
51. Peter Wright on behalf of NSW Farmers, Cowra District Council
52. Shirley May Wright
53. Alan R Lindsay
54. Paul Sullivan
55. Howard Orr
56. James Roncon
57. Richard McCourt
58. Roger Garland
59. S Toohey
60. Ian Kennon

## APPENDIX 5
## LIST OF APPEARANCES

Vince Harris

Dr Bill Muggridge

E Varrone

Richard Wells

Bill Chapman

Bruce Miller, Mayor

Gillian Diamond

Jane Zammit

Graham Dunn

Don Kibbler

Tony Mooney

Alan Middleton

James Keady

Ross Kinghorn

Richard Bloomfield

Peter Riley

Peter Wright

Sue Maynes

Anne Bowen