

Living and Working in Rural Areas

A handbook for managing
land use conflict issues
on the NSW North Coast

Rob Learmonth, Rik Whitehead, Bill Boyd and Stephen Fletcher
Centre for Coastal Agricultural Landscapes

in partnership with

Northern Rivers Catchment Management Authority

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An initiative and product of the Centre for Coastal Agricultural Landscapes – an alliance established by Southern Cross University (SCU) and the NSW Department of Primary Industries (NSW DPI) – in partnership with the Northern Rivers Catchment Management Authority. Funded by the Natural Heritage Trust.

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Project team: Associate Professor Bill Boyd (SCU), Rik Whitehead (NSW DPI), Rob Learmonth (SCU)

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Disclaimer

The information contained in this publication is based on knowledge and understanding at the time of writing (December 2007). Users are reminded of the need to ensure that information on which they rely is up to date, and to check the currency of the information with the appropriate department or the user's independent advisor.

Foreword

The Northern Rivers region, which spans the coast and eastern slopes between Taree and Tweed Heads, is the third most biodiverse region in Australia. Since the 1970s, there has been a rapid increase in population and urban expansion in the area. The Northern Rivers Catchment Management Authority (NRCMA) recognises that these changes are putting great pressure on fragile natural resources, Aboriginal cultural landscapes and rural industry development. This growth has demanded that all levels of government look at the strategic management of land use.

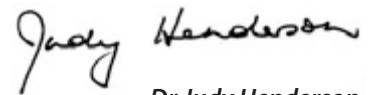
The Northern Rivers Catchment Action Plan is the only catchment plan in NSW that specifically targets land use planning as integral to effective natural resource management. This is in recognition of the potential for conflict that can arise in our community between competing and differing land uses and the impact this has on both primary production and amenity values.

Effective land use planning can reduce environmental costs, reduce conflict between rural land use and development, as well as promote an understanding of the need to protect key natural resources and cultural landscapes in the planning of new settlements.

The NRCMA commissioned this project through our Natural Heritage Trust Investment Strategy in response to requests for information and guidelines, not only to help with land use planning but also to reduce neighbourhood conflict.

We are extremely pleased with the comprehensive way in which the Centre for Coastal Agricultural Landscapes has explored the issues and developed this valuable resource in an easy-to-read format for a wide range of users. This collaborative partnership with regional stakeholders, including landowners, local government, rural industry representatives, environment organisations and state agencies, and the Centre (an alliance between NSW Department of Primary Industries and Southern Cross University) has increased regional understanding of rural land use conflict and interface issues as well as increased our collective capacity to reduce land use conflict through practical actions and improved decision making.

While specifically written for the North Coast community, this handbook can be adapted for use in other areas to help predict and manage conflict over many different competing uses of land and resources. The handbook will be a valuable component and resource for future training aimed at reducing and addressing rural land use conflict issues.



Dr Judy Henderson
Chair

Northern Rivers Catchment Management Authority

Contents

FOREWORD	iii
PREFACE	ix
CHAPTER 1 Rural land use conflict at the interface	1
What are rural land use conflicts at the interface?	1
What are rural land use conflict issues?	2
Why manage these issues?	4
Quantifying rural land use conflict issues	5
Context for the handbook	6
Further information	6
Publications	6
Contacts	6
CHAPTER 2 Living in a rural area	7
Planning to buy a rural property?	7
Buying a rural property	8
Let's get started	8
Head versus heart – how can I avoid a personal and financial disaster?	8
What's next? How do I find the location and the property that will best match my needs?	10
Market analysis	10
Planning policy	11
The drive by	11
Selecting an agent	12
Specific factors to consider	12
"Location, location, location"	13
The property inspection checklist	19
Further information	21
Publications	21
Contacts	22
CHAPTER 3 Rural land use and duty of care	23
What are rural land use conflict and interface issues?	23
But what about right to farm?	24
Why do land use conflicts keep occurring?	25
How can we address land use conflict and interface issues?	25
Principles for avoiding and resolving land use conflict	25
What is good practice and duty of care?	26
Good neighbour policy	28
Isn't a good neighbour policy just plain common sense?	28

That's all very well for big industry, but what about the small landholder?	29
What can I expect out of my own good neighbour policy?	30
Property level check list to avoid conflicts	31
Farm management system programs	32
Property planning	32
Land use buffers	32
What are they and do I have to have one?	32
Further information	33
Publications	33
Contacts	34
Farm management systems	35

CHAPTER 4 Common rural land use conflict issues: questions and answers 37

Finding your way around the issues	37
Burning off and fire hazards	37
To burn or not to burn?	39
Change of farming practice next door	40
Chemical spray drift	40
Cultural heritage – connecting with the land	42
Development activity next door	43
Developing my property	43
Domestic pets – dogs and cats	44
Dumping and burying rubbish on my land	45
Dust	45
Fences – three stringer or four?	46
Land clearing and vegetation	47
Noise	49
Noxious weeds	50
Odour	51
Proximity to national parks, State forests and Crown reserves	52
Roads and right-of-ways	52
Soil erosion	53
Stock	54
Threatened species	55
Trespass	55
Views and amenity	56
Waste water management systems – you're standing in it!	57
Water and aquatic issues	57
Further information	60
Publications	60
Contacts	60

CHAPTER 5 Policies and plans	61
Avoiding and reducing land use conflict through land use planning	61
Planning principles	62
State legislation and policy: involving rural land use conflicts	64
<i>Environmental Planning and Assessment Act (EP&A Act)</i>	67
How does the EP&A Act work?	68
Underlying environmental planning instruments	68
State Environmental Planning Policies (SEPPs)	68
Regional plans and strategies	69
North Coast Regional Environmental Plan	69
Far North Coast and Draft Mid North Coast regional strategies	71
Northern Rivers Catchment Action Plan	74
Local environment plans	75
Standard instrument – local environmental plan (LEP template)	76
Development control plans	79
Further information	79
Publications	79
Contacts	80
 CHAPTER 6 Development control	 81
Introduction	81
Core environmental planning instruments	82
Principles to guide development	83
General	83
Environmental protection	84
Community engagement	84
Protection of resource access and use	84
Cultural heritage recognition	85
Development control plan provisions for reducing land use conflict	85
Development application requirements and checklist	85
Recommended development control plan provisions	86
Land use buffers	87
Role of buffers	87
Types of buffers	88
Summary of recommended minimum buffers	89
Variation provisions	96
Land use conflict risk assessment	96
Why assess the risk of conflict?	97
Factors a LUCRA should consider	98
Reporting the results of a LUCRA	99
Who can undertake a LUCRA	100
How much consultation?	100
Further information	101
Publications	101
Contacts	101

CHAPTER 7 Communication and dispute resolution	103
Communication	103
How and when should I raise an issue with my neighbour?	104
Checklist for addressing a conflict situation	105
Resolving rural conflict	106
Mutual resolution	106
Informal third party help	106
Formal third party mediation	106
Legal proceedings	106
Getting negotiation to work	107
The win/win approach	107
Empathy	107
Appropriate assertiveness	108
Respect and value differences	108
Responding to resistance from others	108
Dealing with people	108
What about negotiation skills?	109
Reframe	109
Respond not react	109
Re-focus on the issue	109
Identify unfair tactics	109
Conclusion – the resolution	110
Lodging formal complaints of an alleged breach	110
Further information	112
Publications	112
Contacts	112

Tables

1: Typical rural land use conflict issues in the north coast region	2
2: Benefits of dealing with the potential for land use conflict	5
3: Example of a rural property wish list	9
4: Principles when planning and implementing land use policies	63
5: NSW legislation relevant to rural land use and reducing land use conflict	64
6: Recommended minimum buffers (metres) for primary industries	90
7: Recommended minimum buffers (metres) for key environmental assets	92
8: Recommended minimum buffers (metres) for other land uses	93
9: Sources of information for minimum buffers	94
10: Land use conflict risk assessment matrix	99

Figures

1: The environmental law and land use planning framework in NSW	67
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Preface

Living and working in rural areas is for many people mostly a very enjoyable and rewarding experience. However, our rural areas contain a diverse range of rural pursuits, a diversity of people, and a rich natural and cultural heritage. This diversity and richness, combined with changing circumstances and changing land use, has in the past created tensions and conflicts in our rural areas.

Various mechanisms and strategies have been applied on the north coast to manage conflict associated with change in land use and between neighbouring land uses. These responses, however, have been fragmented, incomplete and not consistently applied across the region, and neighbour disputes and complaints over the use of our rural areas and protection of the environment and heritage values continue.

This handbook represents a consolidation of practices, strategies and products arising from responses to this issue over many years. The handbook provides an integrated and holistic approach to managing and avoiding land use conflict and disputes in our rural areas. Land use change and the expression of differing points of view as to the use and management of our rural areas will most likely continue, however, to be a feature of living and working in rural areas of the north coast.

Who is the handbook for?

The handbook has been divided into chapters that describe the key elements and strategies for managing and reducing land use conflict issues. Each chapter was developed with different audiences in mind, including:

- consulting planners and land developers
- land use planners within local government
- decision makers within local and state government
- users of natural resources including farmers and land managers
- managers of natural resource assets such as landholders, and government departments and the local catchment management authority
- people living and working in rural communities
- people intending to buy a rural property.

What's in it?

This handbook is designed as a practical reference for a wide cross section of the community. It brings together the following information:

- background to the key land use conflict and interface issues confronting the north coast
- existing material of relevance to managing land use conflict at the interface, including the key issues and tools available
- existing and any new material collated into a succinct presentation of the key principles to do with managing land use conflict

- existing and new material synthesised into guides for reducing and managing land use conflict in the typical land use conflict scenarios that confront land users, natural resource managers and regulators
- descriptions of local environmental plans and new land use strategies that will be prepared over the coming years
- recommended and practical mechanisms to reduce and manage neighbour-to-neighbour conflicts
- references to current best management practice for primary industries that help in reducing impacts on key natural resources and neighbours.
- resources including useful publications, websites and further contacts for those seeking additional information.

Chapter	Description	Audience
1	Defines land use conflict; its linkages to other state wide and regional initiatives and outlines how the initiatives described in this handbook can help reduce land use conflict between farmers, the environment and other rural landowners.	All readers.
2	Outlines factors to consider in buying a rural property, including a property inspection checklist.	People thinking of buying a rural property and real estate agents.
3	Highlights the importance of duty of care and current best management practice in undertaking a rural enterprise to reduce land use conflict and create a good neighbour ethic.	Farming community. Extension and regulatory authorities. New rural property owners.
4	Provides some answers and responses to the most common rural land use conflict issues.	All readers.
5	The planning framework for avoiding rural land use conflict including the opportunities for avoiding rural land use conflict and interface issues via strategic land use planning and local environmental planning.	Local government, State agencies, people with an interest in local plan making and managers of natural resource assets.
6	Describes conflict issues associated with new development and how to manage and control land use conflict and interface issues at the development stage including the application of buffers to separate incompatible land uses.	State and local government, developers, consultants and people with an interest in new development.
7	Highlights the importance of communication and offers suggestions for resolving disputes.	All readers.

CHAPTER Rural land use conflict at the interface

1

Snapshot

The north coast is a place of change. Its population is growing rapidly, its urban areas are expanding and economic imperatives are changing the nature of rural industry and production. Subdivision of rural areas and the changing nature of rural areas have created potential for conflict, while urban development along the edges of our main towns and villages continues to encroach onto both sensitive environmental areas and important natural resources.

If not managed effectively, these changes have the potential to compromise environmental assets, the cultural heritage of the region and limit the productive potential of the natural resources base. Growth and development on the north coast continue to place pressures on important natural resource assets and the use of natural resources for primary production, and land use conflict and interface issues are resulting from this pressure.

This chapter explains the origins of interface issues and the negative consequences that occur between land uses at the interface which result in land use conflicts. The chapter describes the key sources of conflict and sets the scene for responding to conflicts in a constructive way.

What are rural land use conflicts at the interface?

A land use conflict occurs when there is disagreement or dispute as to the use of land and/or a feeling that a person's rights or well being or the rights of the environment are being threatened by an action or undertaking of another or the inaction of another.

The common perception is that most land use conflicts are the result of two dissimilar or incompatible land uses next to each other. In fact, the root cause of conflict is when a land use or an action is incompatible with the views, expectations and values of the people living and working in an area. These values include; intrinsic value of the environment; maintenance of water quality/quantity; protection of wildlife and native vegetation; the right to use and enjoy land; personal and community health; clean air; personal responsibility; consideration of others; recognition and protection of indigenous and non indigenous cultural heritage.

Land use conflict is largely the negative aspects of land use that occurs at the interface. Each city, town, village and property has an interface with an adjoining land use and adjoining land owner. Many aspects of living and working at the interface can be positive such as an urban block which overlooks farmland or adjoins a picturesque waterway, the small hobby farm that enjoys open space by the fact the next door neighbour runs a large grazing property. However, conflict occurs at the interface because the land uses might be quite different. The occupiers and users of the land often have different expectations and views as to their rights and responsibilities of being a landowner or person living at the interface. The interface is also an area where development merges with or encroaches on more natural areas that afford various levels of protection such as national parks, habitat, waterways and wetlands.

How do we respond to these conflicts? There are many approaches, which are described in this handbook. Coordinating approaches is important and the main way this is done on the North Coast is through documents such as catchment management plans and regional strategies. The Northern Rivers Catchment Action Plan (CAP) has identified land use conflict as an important natural resource management issue and has set the following management target.

By 2016 land use conflict within or adjacent to key environmental assets and rural production areas reduced by 90 percent. Key environmental assets include State and regionally significant farmland, high conservation value vegetation and ecosystems and extractive resources.

What are rural land use conflict issues?

A wide range of issues can constitute land use conflicts and interface issues. On the north coast the most common are those that arise between agricultural practices (sources) and neighbouring residents (receptors). Many of these conflicts are unreported although some are referred to local and state agencies, where they may or may not be documented. Table 1 is a summary of the most common rural land use conflict issues of the north coast.

Table 1: Typical rural land use conflict issues in the north coast region

Issue	Explanation
Absentee landholders	Neighbours may be relied upon to manage issues such as bush fires, straying stock, trespassers etc. while the absentee landholder is at work or away.
Access	Traditional or informal 'agreements' for access between farms and to parts of farms may break down with the arrival of new people.
Catchment management	Design, funding and implementation of land, water and vegetation management plans are complicated with larger numbers of rural land-holders with differing perspectives and values.
Clearing	Neighbours may object to the clearing of trees, especially when it is done apparently without approvals or impacts on habitat areas or local amenity.
Cooperation	Lack of mutual co-operation through the inability or unwillingness on behalf individuals to contribute may curtail or limit traditional 'work sharing' practices on-farm or in the rural community
Dogs	Stray domestic dogs and wild dogs attacking livestock and wildlife and causing a nuisance.
Drainage	Blocking or changing drainage systems through a lack of maintenance or failure to cooperate and not respect the rights of others.
Dust	Generated by farm and extractive industry operations including cultivating, fallow (bare) ground, farm vehicles, livestock yards, feed milling, fertiliser spreading etc.
Dwellings	Urban or residential dwellings located too close to or affecting an existing rural pursuit or routine land use practice.

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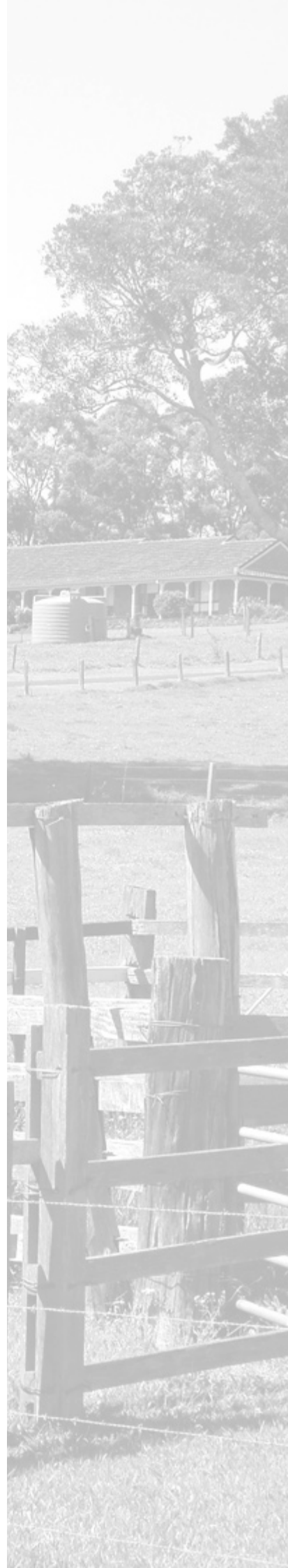


Table 1 cont.

Issue	Explanation
Electric fences	Electric shocks to children, horses and dogs. Public safety issues.
Fencing	Disagreement about maintenance, replacement, design and cost.
Fire	Risk of fire escaping and entering neighbouring property. Lack of knowledge of fire issues and the role of the Rural Fire Service.
Firearms	Disturbance, maiming and killing of livestock and pest animals, illegal use and risk to personal safety.
Flies	Spread from animal enclosures or manure and breeding areas.
Heritage management	Destruction and poor management of indigenous and non indigenous cultural artefacts, structures and sites.
Lights	Bright lights associated with night loading, security etc
Litter	Injury and poisoning of livestock via wind blown and dumped waste. Damage to equipment and machinery. Amenity impacts.
Noise	From farm machinery, scare guns, low flying agricultural aircraft, livestock weaning and feeding, and irrigation pumps.
Odours	Odours arising from piggeries, feedlots, dairies, poultry, sprays, fertiliser, manure spreading, silage, burning carcasses/crop residues.
Pesticides	Perceived and real health and environmental concerns over the use, storage and disposal of pesticides as well as spray drift.
Poisoning	Deliberate poisoning and destruction of trees/plants. Spray drift onto non-target plants. Pesticide or poison uptake by livestock and human health risks.
Pollution	Water resources contaminated by effluent, chemicals, pesticides, nutrients and air borne particulates.
Roads	Cost and standards of maintenance, slow/wide farm machinery, livestock droving and manure.
Smoke	From the burning of crop residues, scrub, pasture and windrows
Soil erosion	Loss of soil and pollution of water ways from unsustainable practices or exposed soils. Lack of adequate groundcover or soil protection.
Straying livestock	Fence damage, spread of disease, damage to crops, gardens and bush/rainforest regeneration.
Theft/vandalism	Interference with crops, livestock, fodder, machinery and equipment.
Tree removal	Removal of native vegetation without appropriate approvals. Removal of icon trees and vegetation.
Trespass	Entering properties unlawfully and without agreement.
Visual/amenity	Loss of amenity as a result of reflective structures (igloos, hail netting), windbreaks plantings (loss of view).
Water	Competition for limited water supplies, compliance with water regulations, building of dams, changes to flows. Stock access to waterways. Riparian zone management.
Weeds	Lack of weed control particularly noxious weeds, by landholders.

Based on: Smith, RJ (2003) *Rural Land Use Conflict: Review of Management Techniques – Final Report to Lismore Living Centres* (PlanningNSW).

While the issues in Table 1 are the most common rural land conflicts on the North Coast, this handbook deals with other issues as well. The reason for this is that land use conflicts extend beyond issues that affect an individuals' enjoyment of land, and include broader community concerns about the local environment and the way the environment is being managed or used. As the population of the North Coast grows and development expands, new interface situations will arise, especially those between urban development and natural environments.

Why manage these issues?

Land use conflicts can result in a variety of undesirable social, economic, environmental and cultural impacts ranging from minor to significant, short term to long term and micro to macro in scale. These impacts can include: negative effects on individuals as a consequence of stress and anxiety; breakdown in communities; additional demands on government services; increased and costly demands on rural industries; degradation of the local environment, which can have flow-on effects for communities and businesses; and loss of culture and identity within communities.

Land use conflict can be costly in its effects on individuals and the community. It is desirable to manage conflict before negative effects occur.

Managing land use conflict before it becomes a negative influence on individuals and the community is desirable. The benefits of dealing with land use conflict are summarised in Table 2.



*Table 2: Benefits of dealing with the potential for land use conflict***Social**

- Protection of amenity to individuals and the community; maintenance of well-being
 - Recognition of the rights and needs of individuals to a healthy and safe environment
 - Reducing stress which could result from continual exposure to impacts, financial insecurity, legal costs associated with any legal action including payment of fines
 - Protection of cultural heritage and community identity
 - Protection of landscapes and ecosystems valued by community
-
- Protection of natural resources including agricultural land and extractive resources
 - Preventing costs involved in nuisance or environmental mitigation measures
 - Avoiding lost productivity caused by additional operating limits and time taken to address conflict issues
 - Avoiding costs associated with legal challenges and/or enforcement action by regulatory authorities
 - Availability of employment
 - Maintenance of land and property values
 - Reduced need for monitoring, handling of complaints, enforcement and mediation
 - Avoiding costs associated with environmental remediation and maintenance of resource quality such as cost of treatment of potable water supply
-
- Environmental protection – healthy and productive catchments
 - Retention of local biodiversity and ecological systems
 - Soil conservation
 - Protection of water quality
 - Retention and maintenance of riparian vegetation

Quantifying rural land use conflict issues

State of the Environment (SoE) reports are the main documents for recording and monitoring environmental issues, including complaints and land use conflict at the local level. Local government is required to complete a comprehensive SoE report each four years. Annual summaries provide brief updates on major issues and changes.

Each of the local SoE reports for the twelve local government areas of the north coast were reviewed by the Northern Rivers Catchment Management Authority to establish a benchmark which could be used to measure progress in achieving the land use conflict target of the Northern Rivers Catchment Action plan. The review found that while there is evidence of land use conflict and interface issues in the reports, they lacked specific information and data on rural land use conflict issues. In the interest of measuring progress and future benchmarking, it is highly desirable that SoE reports capture specific data on the state of land use conflict and interface issues.

In addition to local SoE reports, complaint data is captured centrally via the NSW State government's pollution and environment line. Complaints and calls recorded are grouped into categories such as air quality, chemicals, noise, threatened species,

pesticides, cultural heritage and water issues. Grouping complaints into these categories allows longer term trends to be identified although this is limited by the fact that data about both urban and rural issues are captured.

Context for the handbook

This handbook complements the Far North Coast Strategy and Draft Mid North Coast Regional Strategy, the Northern Rivers Catchment Action Plan and the new local environmental plan preparation process, all of which deal with issues to do with land use, managing the interface issues between competing and differing land uses and managing land use conflict between uses of resources.

Further information

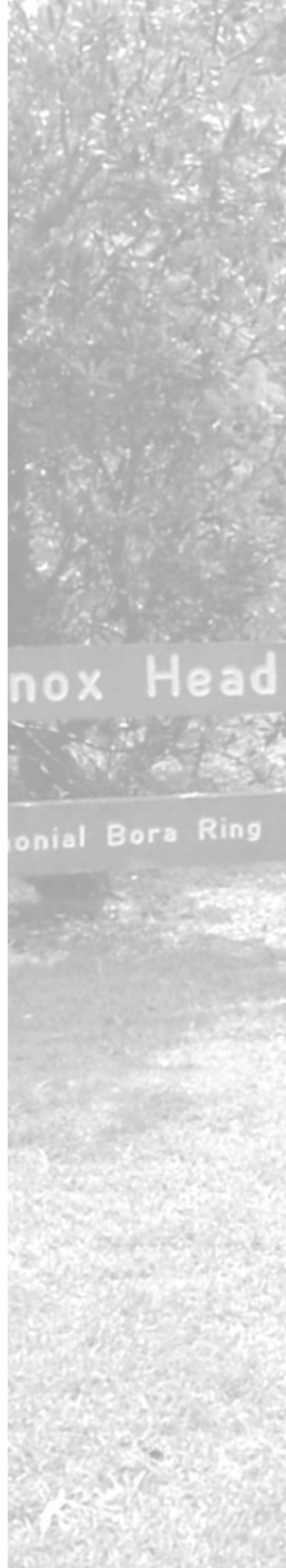
Publications

- *Does the Environmental Planning and Assessment Act 1979 (NSW) or right to farm legislation provide a solution to the issue of rural land use conflict?* McNeil, H. 12 LGLJ 98 (2006)
- *Draft Mid North Coast Regional Strategy 2006* © State of NSW through Department of Planning, December 2006 www.planning.nsw.gov.au
- *Far North Coast Regional Strategy 2006–31* © State of NSW through Department of Planning, December 2006 www.planning.nsw.gov.au
- *Land Use Conflict – Review of Management Techniques*, Planning NSW. Smith, R.J. (2003)
- *Northern Rivers Catchment Action Plan*, Northern Rivers Catchment Management Authority 2007 www.northern.cma.nsw.gov.au

Note: Local and regional libraries may provide another useful source for obtaining information on this topic including local contacts and specific information relevant to the area.

Contacts

- Local government www.dlg.nsw.gov.au
- Northern Rivers Catchment Management Authority www.northern.cma.nsw.gov.au
- Northern Rivers Regional Development Board www.investnorthernrivers.com.au
- NSW Department of Environment and Climate Change www.environment.nsw.gov.au
- NSW Department of Planning www.planning.nsw.gov.au
- NSW Department of Primary Industries www.dpi.nsw.gov.au
- NSW Department of Water and Energy www.dwe.nsw.gov.au



CHAPTER Living in a rural area

2

Snapshot

This chapter is aimed at people who are looking at buying a rural property or those thinking of living in a rural area, and those who advise them e.g. real estate agents. It is also a useful reference for farmers, land managers, and local and State government agencies and advisers when dealing with conflict issues.

It highlights the importance of sound land management in avoiding and resolving rural land use conflict at the neighbourhood and local level. We give you some ideas to help you enjoy your rural block and introduce you to some of your rights and social responsibilities in conducting your day-to-day activities, especially to do with acting within the law and getting on with your neighbours. Remember, it is only a beginner's guide so is not in any way comprehensive. Sources of more information are listed at the end of this chapter. Make sure you research your purchase thoroughly before you sign on the dotted line.

Topics covered in this chapter include:

- *useful tips for buying a small holding in the country*
- *practical issues to consider when buying a rural property, e.g. remoteness, access to services, climate, current agricultural activities and future land use*
- *legislative issues such as land zoning, the Section 149 Certificates and agencies responsible for planning and land use*
- *consideration to issues such as the impact of future land use and the nature of the neighbour's activities when purchasing a property*

Importantly, this chapter stresses positive ways of communicating with your neighbours. If an issue with the potential to cause conflict arises, litigation should always be seen as the last means of resolving this conflict.

This chapter does not cover technical issues to do with farming, e.g. how you will farm, establish an orchard or plan out your block. The Further Information section at the end of this chapter points you in the direction of organisations to contact. It also includes references for different aspects of property management as well as some further ideas on good neighbour practice. Chapter 4 also describes common causes of land use conflict and gives a 'potted guide' to legislation you will need to be familiar with to conduct certain activities and potentially reduce conflict through knowledge of the law.

Planning to buy a rural property?

So, you are planning to buy a rural block on the north coast of NSW. This decision may have been prompted through personal or economic motives, hopefully after much thought and consideration with 'significant others'. You may wish to simply enjoy the easygoing lifestyle of the region, the subtropical environment, be involved in a small agribusiness or undertake a more traditional farming enterprise. Whatever the reason, you will still need to manage your block with due care and responsibility not only towards the environment but also towards others, including your neighbours. By doing this you will help to maintain the quality of life that makes the north coast such a desirable place to live.

It's important to manage your property with due care and responsibility both to the environment and the community, especially your neighbours.

Lack of knowledge of people's rights and responsibilities in caring for the land, including duty of care for others, can be a major source of disharmony between neighbours. This can include ignorance of legislation as it applies to laws governing the land and not knowing who to contact to help resolve an issue, leading to frustration, mistrust and, at times, misplaced aggression.

The laws that govern land use are complex and varied. Responsible land owners try and keep up with laws that apply by contacting relevant organisations, reading, asking questions and using the internet.

The Landcare ethic is strongly implied throughout this handbook; it advocates that caring for the land and its people is an essential element of enjoying the richness that the region has to offer. Working with the local community for the common good is a key philosophy inherent in this chapter.

Buying a rural property

Let's get started

Choosing a property is largely a matter of the heart and, unfortunately, the "head thing" may come much later. By standing back and doing your research first you'll be better armed to make an informed decision and not have any regrets about your move to the 'idyllic life'.

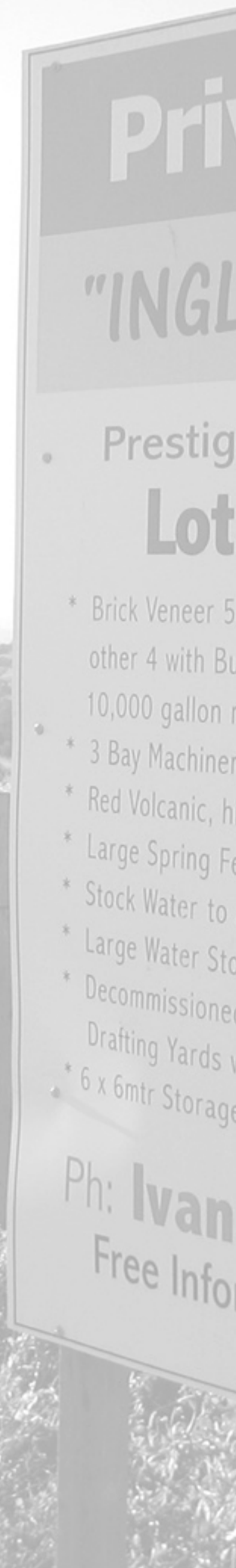
Many conflicts can be headed off at the pass by considering some basic requirements before you buy your dream block. It is important to realise that in moving into a rural area you will find routine activities you may be unfamiliar with and may cause you concern. These can include things such as tractor noise, burning off, stock management procedures, dust, land clearing, chemical application, harvesting and cultivation activities.

Conflict, either with neighbours or authorities, often results from people not understanding the environment they are moving into or arriving with preconceived ideas not based on the realities of rural life

So here are some suggestions that may help you maximise your enjoyment of the north coast lifestyle. They may appear to be plain common sense but often they are overlooked by intending buyers caught up in the excitement of searching for and buying a new property.

Heart versus head – how can I avoid a personal and financial disaster?

Here is one approach that you can adopt. Find a quiet space, sit down and think about your personal goals relating to living the rural lifestyle and how you will achieve them. This may include drawing up a wish list of what you want from your block and why you wish to buy rural land in the first place. If you have a family or partner, include them in this exercise. It is



essential to avoid an important source of disharmony at the family level by identifying and accommodating the desires and wishes of others in this important decision.

Now comes the most important step of reviewing the list in terms of your motivation to live in the country. List your goals and then place your requirements and limitations in two separate columns. Include financial limitations, employment opportunities, your state of health; education facilities, transport, and your knowledge of and expertise in managing the land. Table 3 illustrates some typical goals, desires and limitations for people moving to a block in the country.

Table 3: Example of a rural property wish list

My goals are	I would like to have	My limitations are
1. Work three days a week, including the capacity to relax	• Suitable and well paid part time employment commensurate with skills • Property close to major settlements • Opportunity to work from home • Easy care block	• Availability of suitable well paid part time employment options • Long travel time to major settlements • Internet and communication access • High maintenance block requiring weed eradication, fencing and clearing • Spouse needs to work to supplement income • Lack of time to enjoy leisure and lifestyle activities
2. Be self sufficient in terms of power, water and food	• Solar to meet all energy needs • Adequate water supply from rain water tanks, bores, dams and access to stream • Fertile soils in a frost free environment • Establish a small orchard and vegetable garden • Sell organic produce at farmers markets	• Cost and limitations of solar power such as enough capacity to weld, cook, run a washing machine, power a waste water management system. • Lack of available water in dry periods, inadequate tanks, poor water quality • No water licence for commercial purposes • Limited knowledge of horticultural practices • Lack of viable, fertile land • Frosts • Need to spray to control weeds and pests • Poorly maintained fences to exclude stock • Your health and that of others
3. Fewer neighbours, peace and quiet	• Property suitably located from the activities of other land owners • Tranquil bush setting	• Usually a long way into town requiring a good road, reliable car, increased petrol costs • Family needs: proximity to schools, sporting facilities, shops, medical care and relations • Nearby seasonal agricultural activities including harvesting, stock movement, ploughing, processing • Proposed new development area

cont. /10

Table 3 cont.

4. Large home to accommodate all of our needs	• Old rural homestead with five bedrooms • Swimming pool • Sheds	• Initial purchase price – limited by tight budget • Maintenance, cost of renovation including travel, available tradespersons prepared to travel
5. Hobbies and recreation	• Pets, including horses	• Adequate and appropriate fencing to control animals • Lack of animal husbandry skills • Adequate feed and area to raise a horse

Once you have completed your list you should now have determined your motivation, whether you really wish to live in the country, and some specific requirements for your future purchase in order to meet your goals. You will also be more aware of your own situation, and have determined the direction in which you, your partner or your family, wish to head.

What's next? How do I find the location and the property that will best match my needs?

Before you buy a property get to know your region. Maps, guides, talking to the locals including real estate agents are all good sources of information.

By this stage you should now know approximately where on the NSW north coast you wish to live, how big a block you require, the activities you wish to conduct, your financial limitations, and the needs, personal and otherwise, of all those concerned with the decision. You have just taken the first step in creating harmony by sorting out your needs and those of significant others. Mutual agreement at the personal and family level on what you all want can prevent friction in the future, both at home and indirectly with the neighbours.

To get better acquainted with the district or region, and to find some potential and desirable localities, you will need to source maps and guides. Especially useful are topographical maps which show details of settlements, roads, gullies, creeks, mountains and administrative boundaries. Tourist information centres, the web – including Google Earth – are other sources of useful information.

Now comes the next step of finding the right property for you and your family.

Market analysis

Everywhere there seems to be the perfect purchase, often for a range of different reasons. How do you narrow this down so you can compare purchase prices and best approximate what you get for your dollar?

This brings us to the stage we call the market analysis. This may seem like a frightening option, the province of marketing gurus with large expense accounts. However, it can be

simple. All it means is taking the time to do some research. Get on the web, look through the region's real estate ads, e.g. www.realestate.com.au, www.domain.com.au, and www.sellwithoutagents.com.au, are useful starting points. Review local real estate literature and sales research data. This will give you a more informed view as to what is about and what you are going to need to spend on a property that best matches your wish list.

Any professional real estate agency should be able to help you with the necessary data and feedback on current market activity. Market analysis will further narrow down the locations where your dream maybe realised financially and where capital growth may occur. It will also give you an indication of what activities can be carried out on adjoining blocks and the nature of agriculture and lifestyle activities in the locality you are looking at.

Planning policy

Are there any plans by State or local government that might change the nature of the area where your dream property is located? Check out the relevant regional plans and strategies which guide future planning and development. There are two regional strategies for the north coast: the *Far North Coast Regional Strategy* and the *Draft Mid North Coast Regional Strategy*. They include maps showing future urban growth areas. The local environmental plan is a key reference to check at Council as this shows the land zones for each local government area. There may also be a rural residential strategy and urban growth strategy that has been prepared by Council showing where future settlement and development is planned. Find out what are the plans for development in the locality you are interested.

It's a good idea to consult the Department of Planning website (www.planning.nsw.gov.au) for planned major projects as well as other government agency websites to get a handle on where new developments are proposed. Consultation with the local council may prove very valuable and don't forget to find out where future roads, highways and infrastructure are planned. There is an overview of the planning system in Chapter 5. The *Further Information* section at the end of this chapter has references to assist your research.

The drive by

You've been busy with your research so now you have a fair idea of price, what you can afford, where you want to live, as well as a knowledge of current infrastructure; services, amenities and an indication of where the productive land may be. You should have also identified any limitations and threats to your proposed purchase such as encroaching development and your financial capacity.

So now it's out into the car to start looking at some of those locations that have been identified in your research. Here the *Property inspection check list* at the end of this chapter may serve as a guide as to what factors you will be looking for (amenity to services, good road, property size, condition of fences, level of weed infestation, arable land, agricultural activity, and lifestyle possibilities). Look for the for sale/auction signs. What agent seems to be the most popular? What condition are the signs in (a faded sign can be a giveaway as to how long a property has been on the market) and where does there seem to be the most activity in terms of available properties.

Selecting an agent

Talk to the locals and ask who they would use. Is there a regional buyer's agent? Visit a number of agents that specialise in rural properties. Check out the properties listed in their windows. Faded photos are a pretty good indication of either a lack of buyer interest in a property or lack of interest by the agent. Give the agent an outline of what your requirements are. If they start showing you properties not relevant to your list or financial limitations, it's time for another agent.

These are some questions you need to ask the agent. How long has a property been on the market? What covenants and special conditions apply? Are there land use restrictions or conditions that relate to the proposed purchase or are relevant to the adjoining neighbours? What is in the contract and what does the *Section 149 Planning Certificate* say about zoning and special conditions that apply to the land?

Specific factors to consider

There are many things you need to think about when buying a property in addition to those already mentioned. Some are more important than others depending on your circumstances, goals and expectations. Once you have settled broadly on a region and type of property, it's time to start thinking about the finer details involved in buying a small rural holding.

The more thought you can give to them now at the decision-making stage, the happier you will be. Indirectly you will begin to reduce any future rural land use conflicts which may occur by creating a positive outlook and not regretting ill-founded decisions leading to disharmony at home and with neighbours.

If you are setting up a commercial farming operation next door to another there tends to be less potential for conflict and more opportunity for mutual cooperation. At times, lifestyle blocks established right next to rural enterprises can be a recipe for conflict, both for the new property owner and the farmer.

Some of the following factors may apply to your personal situation and others won't. It is not a comprehensive list for buying a rural block but it's a good start. For more guidance, talk to your local council, Northern Rivers Catchment Management Authority, NSW Department of Primary Industries and other relevant organisations who can assist (See *Further Information* section for contact details).



“Location, location, location”

Will the property's location suit you and your family? Do your homework so you can be sure.

We all know this old real estate adage. Why should it apply to you in buying your new dream rural home? There are lots of reasons; here are a few to start with.

Up hill and down dale. Much of the north coast hinterland where rural activities occur can be extremely hilly with steep valleys and small plateaus. This can be limiting in terms of getting machinery to a site, building a house and sheds, weed eradication, mustering stock and viability of the block for agriculture. The most expensive and arable rural land will be on the river flats, and your budget in terms of purchase maybe a limiting factor.

Hermitsville. Isolation may have its benefits in terms of privacy, however, ‘just popping down to the shops’, taking the kids to school, access to facilities, including doctors and medical assistance, could all become onerous as well as expensive in terms of vehicle running costs and people’s time. Also it may be a long way to travel to or from the relatives (advantage or disadvantage – your choice!).

Lack of available water. Is the block on town water, tank water or groundwater? Does it have a water licence? Are there adequate dams and creeks? Can I pump water for my domestic needs from the creek? Can the creek sustain my pumping? Do the tanks hold enough water to meet all of our needs, especially during dry periods?

Going under – too much water. Greeting the State Emergency Services flood boat at the front verandah, or worse still, on the roof, is not an entertaining prospect for the new property buyer. Is the property on a flood plain or flood prone area? Is the property inaccessible in wet weather and if not for how long, especially during high flows? Is there a drainage management plan for the area or the property? Will stock be able to move to higher ground? Contact the local council, Rural Lands Protection Board or State Emergency Service for more information on flood prone land.

Soils ain’t just soils. Get a soil test done to establish that the property will meet your needs. Is the property in an acid sulfate soils hot spot? Is the soil suitable to support foundations and other building infrastructure? Is there the potential for soil slip? Soil productivity is what most landowners are interested in – the capacity to grow healthy and productive crops and pastures. Contact your nearest NSW Department of Primary Industries office for more information.

Road, what road? Are all the roads, public and private, including those on the property, passable under all weather conditions? Are they safe? Accidents are common in country areas, especially on dark deserted roads at night. Does the property have Crown roads, sometimes referred to as ‘paper’ roads? These roads are a part of the State’s public road network, and most have not been formed or constructed. For more information go to website www.lands.nsw.gov.au/crown_land/roads and a topographic map of the area. The map will indicate where these roads are.

You should also establish whether the property has “legal access” is via a Crown road, public road, a right of carriage way or just public access via a private road under some form of agreement. If so, find out what your rights and responsibilities are. Access to

some more remote properties may be via roads through State forests. These roads may not provide the legal private access you require. If you are purchasing land adjacent to or near a State forest specific rules apply to using these roads. Check the *Further Information* section, Forest NSW website or contact your nearest Forest NSW office for more details.

Contaminated land. Contaminated land can be an issue when you are buying rural land. Land can be contaminated from past agricultural activities and the application of persistent pesticides or the inappropriate disposal and storage of chemical containers. It is sensible if buying agricultural land where contamination may be an issue to check if chemical residues could be an issue. A chemical residue soil test should be conducted if you have concerns or if this is required by the council. An example of this is if you are planning on building a dwelling. Contact your nearest local council for further information and advice or refer to information available from the Department of Environment and Climate Change or NSW Department of Primary Industries. There a number of laboratories in the region where chemical residue testing can be undertaken including NSW Department of Primary Industries at Wollongbar and the Environmental Analysis Laboratory at Southern Cross University.

Many rural properties that had cattle in the past were required to chemically dip their livestock to eradicate tick infestations. Dip sites are contaminated land. Make sure you know if the property you are considering has a dip site. They are commonly marked on topographical maps, and the NSW Department of Primary Industries has a dip site database.

Cows moo, roosters crow and dogs bark. Check out the next door neighbours' land uses. What activities are carried out just over the fence, e.g. horticulture, a piggery, a quarry, intensive poultry operation? Being next to a State forest may seem idyllic but remember that logging operations could happen at any time. If you wish to conduct an organic enterprise the neighbour's operation next door may have an impact in terms of spraying, fertiliser spreading etc. The neighbour maybe conducting a highly regulated agricultural enterprise, which you will just have to live with should you move in.

It's a jungle out there! Useful plants or just weeds? Everyone wants to live and thrive on the north coast, including weeds, and keeping on top of them can be a real chore. Weed control is expensive in terms of time, labour and chemicals. Noxious weeds are worse. There is legislation to ensure that they are controlled on your property, and fines apply if you don't. Check with the local regional or local weeds authority, NSW Department of Primary Industries, or Landcare group so you know what the real undesirables are. Having noxious weeds or huge areas of the common garden variety types on your property will certainly not endear you to the neighbours.

Bushfire risk. We all understand the value of trees and the important role they play in the natural order of things. The down side, however, can be the risk of bushfires and the risk to property and people caused by having trees too close to houses, fences and sheds. If the block needs clearing be aware that legislation may limit your capacity to do so, especially where native trees and shrubs are concerned.

Ready to be a rural prisoner? If your situation changes, e.g. if you lose your job or you have health problems or things go 'pear shaped' personally and you need to move, there is nothing worse than having a financial or high maintenance burden that you have to sell quickly. What do you need to know to avoid the risk of being lumbered with a hard-

to-sell rural property if you need to get out fast? Questions to ask include: How long has your intended “dream purchase” been on the market? Why are the vendors selling? Has the zoning changed or will the zoning change? What is the potential for subdivision? Are the vendors selling because of the neighbour’s activities?

Size of the block. Hey, size does matter! Large is not necessarily best, however, discovering later that the block does not support a viable livestock enterprise or horticultural activities could be financially ruinous. It is all about choosing a block that will be suitable for the activities you wish to pursue. Will you be able to manage a large size rural block? Will you have adequate tools, labour and machinery to keep on top? Fences and accessibility on a large block can also be issues, as can additional costs in herbicides and fertilisers. Getting intimate with the *Victa* can have severe lifestyle limitations for rural residential landowners. Perhaps you love mowing and pulling out lantana! This leads to the next point.

Will I have enough time to manage the property? In many instances ongoing property maintenance, including weed control, mowing, tending trees, repairing fences, cultivation and stock management, will be done at the weekend. During the week most of us are out earning a living to pay off the mortgage. Are you prepared to spend most of your weekends on these activities? What are the family’s commitments, e.g. sport, going to beach, relaxing, visiting an ill relative, having a quality of life? Will maintaining your rural block limit both you and the family’s capacity to enjoy what the north coast has to offer?

You have to be in the black to be green. Think about the money you wish to spend or will be required to spend not only to buy the block, but to maintain it and to undertake the activities that will make it your haven, e.g. plant out a rainforest, establish an orchard, build a shed, horse yards or poultry pens, get rid of weeds, or improve pastures. Get some approximate costings for some of these basic activities. Your local Rural Lands Protection Board, weed authority, NSW Department of Primary Industries office, rural supplier or Landcare group will be able to help here. Consult the *Further Information* section at the end of this chapter for relevant contacts.

Zoning and special conditions. Local councils have the responsibility to plan for appropriate rural land uses and to put rules in place to avoid potential land use conflicts. It’s important to be fully aware of the rules and conditions that will apply to you and your neighbour’s land. You don’t want to find out after you have purchased your block that the ideal new industry you wish to start up or the development you plan on undertaking will be difficult to get approval for or simply not permitted. Some questions that flow on from this are:

- What is the allowable land use? The property – is it rural? Is it rural residential? Does it have a housing entitlement?
- Will this be a bureaucratic nightmare? Red tape? What approvals do I need to carry out my activities? Does the zoning permit this activity? Make sure you get ‘the truth and nothing but the truth’. Zone changes are rare so beware of false promises or predictions that rezoning can and will, occur. What covenants are on the land?
- What does the *Section 149 Certificate* say? Consult your solicitor. A *Section 149 Planning Certificate* is typically requested from the relevant local council at time of property sale. This Certificate, which has a fee attached, can provide valuable information as to the zoning of the land and any possible restriction on the use of the land.

- What is the local council's policy on legitimate rural activities? The local council may provide a *Notice to Purchasers of Rural Land* as an *Annexure* to the standard Section 149 Planning Certificate. This annexure may outline:
 - Council's support for the 'right' to carry out legitimate farming practices.
 - That council will not support any action to interfere in such uses provided they are carried out according to industry standards, relevant regulations or approvals.
 - Legitimate rural land uses.
 - That intending purchasers consider their actions in the light of potential conflicts.

An example of a *Notice to Purchasers of Rural Land* is included in the following text box. Be aware however that not every council will have a Section 149 Certificate *Annexure* addressing the policy of the council on rural issues and complaints over legitimate and routine practices in rural areas. If in doubt, ask the council. If they do not have a policy consider your rural property purchase in light of the information presented in this handbook.

Example of Notice to Rural Land Purchasers

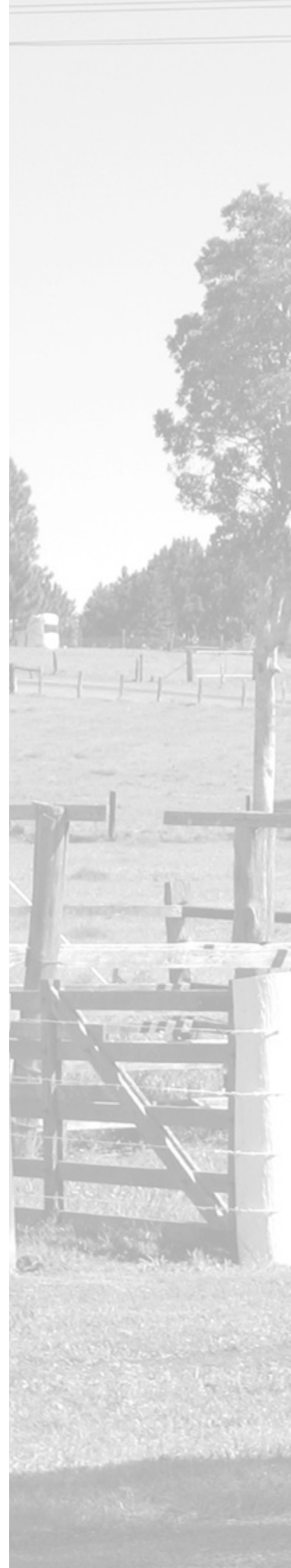
[Name of council] supports the rights of persons to carry out legitimate rural and agricultural uses and practices in rural areas. [Name of council] supports responsible and sustainable rural land management and rural enterprises. Landholders should avail themselves to all relevant information, guidelines, codes and best practice notes that are relevant to their industry and enterprise.

[Name of council] will not support any action to interfere with the legitimate rural and agricultural use of rural land where such activities or uses are carried out in accordance with industry standards, relevant regulations and policies or approvals. [Name of council] points out that some of the activities listed below will require formal consent of council and/or government agencies or the Catchment Management Authority. These organisations should be contacted if any person has any doubt as to the approvals required for these land uses.

Intending purchasers are advised that legitimate rural and agricultural uses of land include:

- Agricultural processing establishments
- Application of manure, fertiliser and soil amendments
- Animal husbandry and animal husbandry practices
- Bush fire hazard reduction burning
- Cane burning
- Cultivation of land
- Construction of access roads and tracks
- Construction of dams, drains, landfill and contour banks
- Construction of fire breaks
- Dairies
- Extractive industries, mines and related works
- Fencing
- Harvesting operations
- Intensive animal industries
- Intensive livestock waste disposal systems and ponds

cont./17



Example cont.

- Logging and milling of timber
- Machinery sheds and rural outbuildings
- Movement of livestock over public roads
- Pesticide application, storage and disposal
- Piggeries
- Pumping and irrigation
- Poultry keeping and meat chicken establishments
- Revegetation
- Rural industries (e.g. agricultural processing facilities)
- Rural tourist facilities
- Silage production
- Slashing and mowing of pasture and grasses
- Stock yards
- Use and repair of agricultural machinery and equipment
- Use of aircraft in aerial spraying, seed and fertiliser application.
- Use of unsealed public roads
- Weed control
- Woodlots and shelter belts.

Intending purchasers of rural land who consider they may have objection or difficulty in living in the rural area where the above land uses and practices occur should seriously consider their decision to purchasing land in a rural area. Rural areas are dynamic and are subject to change. Some rural and agricultural practices involve the use of pesticides and can create odour, noise, dust. Smoke, vibration, blasting and change the amenity of an area. While off site impacts from rural industries and rural activities should be minimised, they can rarely be completely eliminated. Some activities are carried out in the early morning, late evening and on weekends.

This notice does not exempt any activity or development from any statutory requirements that applies. This notice does not affect the rights of individuals to take action under common or statutory law.

What can the block support? Llamas looked good. You really need to have done your homework if you have 'zeroed in' on a property. Land capability to do with issues such as stocking rates, soil types, pasture species, available water, topography, and vegetation are all major factors in taking on a small rural enterprise or just using the block for lifestyle purposes.

Mistakes here can affect the use of your property and offset the neighbour's enjoyment of their land or the productivity of their rural enterprise. The combination of stock looking for water and feed and poor fences can lead to real conflict next door. You will also need to note that local councils require applicable consents for intensive farming, aquaculture, dams, animal establishments and other related activities. Check with your local council to see what activities require consents and the specific conditions which apply. This could influence your property selection and the activities you can undertake.

Past it – your health, mad dogs and new residents go out in the midday sun. Rural activities are the province of fit and able people. If you are middle aged or perhaps a little older consider your physical capacity to undertake some of the activities associated with running your property, both now and in the future.

Much of the north coast hinterland is very hilly, rocky and at time densely wooded. Your level of fitness is a major factor in undertaking manual tasks. In addition, the north coast climate, especially from December to mid March, is not only hot and humid but can be physically draining as well. Most locals will tell you that during this period most work on a north coast property is done in the morning and late afternoon. The midday heat combined with humidity makes going into town, doing the books, having an air conditioned tractor or having a siesta in the middle of the day just plain commonsense.

All tea and scones – support and networking. Where will I be able to get good local advice? Is there a grower group or organisation to support my enterprise? Is there a residents' or Landcare group? How does the community get together (tennis club, school P&C)? In many instances, neighbourhood networking will return the initial effort for the new chum in making contact with those close by many times over in terms of support, local advice, in times of emergency and making new friendships. Most rural communities have a local bush fire brigade and can be an excellent initial contact for new comers, in a mutually co-operative way.

The animals next door. We all value and are committed to what the north coast has to offer. Adopting a sharing and caring attitude towards our neighbours and the environment is all a part of the commitment. The nearby neighbour may be a commercial farmer who has the right to carry on their farming operations in accordance with local planning provisions and other regulations. This can include conducting forms of intensive agriculture such as piggeries, feedlots and poultry farming.

It is important that you have realistic expectations and are aware that your neighbour's expectations may be different to yours. Their home could also be their business. Mutual cooperation and respect for others and their needs, especially the neighbours, will go a long way in assuring harmony and the enjoyment of your block.

Aspect. This can be a major influence in property selection in terms of productivity, amenity and lifestyle. You may require a frost free property or one that is relatively protected from climatic extremes, including wind, rain or extreme sun. Think about whether the house has the ideal northeast aspect and is sheltered from climatic extremes, including having adequate shade (this will also help to reduce heating and cooling costs, especially if you are thinking of going solar).

Work opportunities. If you need to work full time or to supplement your income, work opportunities will be a major factor in determining where you will live and what you can afford to buy, as well as whether you will be able to maintain your block or carry out some form of rural enterprise. The isolated country block maybe ideal in terms of privacy and meeting your other needs but it simply may be too far away from major settlements where the work opportunities are. In many of the more rural locations on the north coast employment prospects are limited or simply involve a lot of travel by car each day. In many instances public transport is also severely limited.

If you require to work from home, check the availability of services including phones, mobiles, internet, three-phase power and other infrastructure needs. Putting the power on, especially if it has to be brought from a long way, is very expensive and getting repairs done to phone and electricity sources can also take time and be costly. Get quotes before you buy a property should you need these services or those that exist need to be upgraded.

The property inspection checklist

You may find the following checklist useful when you are assessing whether a property will meet your needs and for identifying any pitfalls it may have. The checklist provides a summary of the major issues we have so far discussed. Copy the section and take it with you on your next inspection or pass it on to a friend if they are looking at buying a rural block.

Your rural property inspection check list

Property address

Asking price \$	Property size (hectares):
Real estate agent	Phone:
Nearest town	Distance to town:
What is the title on the property? e.g. Torrens	
Who owns the land?	
What is the property zoned as – e.g. rural, rural residential?	
What activities are currently carried out on the land?	
Does it have legal access?	

Residence

Aspect of residence
 Condition and suitability of residence (number of bedrooms etc.)
 Will the residence require renovation? If so, what is the approximate cost?
 Are residences and structures council approved? *Y/N*
 Is a residence permitted to be built on the property? *Y/N*
 Covenants including easements and right of carriageways? *Y/N* If Yes, what are they?

Condition and suitability of other infrastructure

Condition and suitability of stock handling facilities
 Condition and suitability of fences
 Number and size of the paddocks
 Condition and suitability of farm buildings
 Condition and suitability of water supply system, including pipes and pumps

Services to the property

electricity *Y/N* town water *Y/N* garbage service *Y/N* town sewerage *Y/N*
 If a service such as electricity is required how much will it cost?

Water

Type and quality of domestic water supply (tank, bore, dam, creek, and river)
 Type and quality of stock water supply (tank, bore, dam, creek, and river)
 Type and quality of irrigation water (tank, bore, dam, creek, and river)
 Does the property come with an irrigation licence? *Y/N* **Size of licence** **Type of licence**
 If the property has an irrigation licence who owns the licence?
 Condition and suitability of irrigation equipment

cont./20

Checklist cont.

Land types wetlands% alluvial flats% gentle slopes% steep slopes%

Soil type(s)

Has the property had a soil capability/analysis report done? *Y/N* If Yes

Soil description (depth colour and pH)

Is it acid sulfate soil country? *Y/N*

Evidence of salinity? *Y/N*

Soil erosion – What % of the property is eroded?

Vegetation

Cleared% forest% pasture% crops% wetland% native%

Main forest type or species

Suitable shade for stock

Condition of creek bank and surrounding vegetation *poor/fair/good*

Condition of bushland *poor/fair/good*

Main pasture species (collect grass flower heads if not sure)

Weed infestation? *Y/N* Evidence of noxious weeds

Neighbouring land uses e.g. grazing, intensive agriculture, quarries, forestry?

Routine and typical activities on adjoining lands e.g. chemical application, manure application, harvesting, use of machinery?

Ownership status of adjoining properties e.g. tenants, absentee landholders

Development proposed in the area or on adjoining lands?

Suitability of the property for your intended land uses?

Approvals required for your intended land uses or development?

Does the property have any joint forestry or conservation agreements on the title, uncompleted works or maintenance contracts?

RLPB rates including any outstanding rural land rates or charges

Any chemical residue issues of the soils or stock

Livestock disease issues if any

Plant disease or pest issues if any

Weed control notices applying to noxious weed control

Noxious animal and pest orders if any

Details of any Crown land leases

Mineral exploration license or any relevant mining leases

Additional notes

Condition of roads – public and private – *good/fair/poor*

Proximity to education facilities? *Km*

Proximity to medical assistance? *Km*

Proximity to shops? *Km*

Final note

Have viewed the property's contract and the attached Section 149 Certificate and are fully aware of the zoning, covenants, and what activities can and can't be done on the property.

(Sources: *A Resource Kit for rural landholders in the Nambucca, Macleay and Hastings Valleys* (2006)
Northern Rivers Catchment Management Authority, NSW DPI, and
Some precautions when buying rural land, NSW DPI Agnote Gen-044, 2004)

Further information

Publications

- *A Resource Kit for rural landholders in the Nambucca, Macleay and Hastings Valleys* (2006) (Northern Rivers Catchment Management Authority www.northern.cma.nsw.gov.au)
- *Bush Law Handbook: A practical guide to law on the land in NSW* 2nd Ed. Tony Smith, Redfern Legal Centre Publishing, 2005.
- *Buying your bush block*, 3rd Edition Windrust, A. CSIRO Publishing, 2001 www.agric.nsw.gov.au/reader/small-farm/buying-your-bush-block
- *Farming in a Small Way: Your practical guide to rural living and country life*, 4th Edition. Geraghty, G.J. and Larkin, J.G. Edited by Dixon, D. NSW Agriculture, 2003 www.agric.nsw.gov.au/reader/small-farm/farming-in-a-small-way
- *Forest Facts, North East Forestry Region: Living near State forest boundaries* Forests NSW, NSW Department of Primary Industries www.forest.nsw.gov.au
- *Forest Facts, North East Forestry Region: State Forest Boundary Fencing Guidelines* Forests NSW, NSW Department of Primary Industries www.forest.nsw.gov.au
- *Forest Facts, North East Forestry Region: Use of State Forest Roads by the Public* Forests NSW, NSW Department of Primary Industries www.forest.nsw.gov.au
- *New, Small Rural Landholders; Managing a Small Property* DPI Victoria www.dpi.vic.gov.au
- *Put yourself in the picture: caring for your small rural property* NSW DPI 2006 www.agric.nsw.gov.au/reader/tocal-publications/pyitp-book
- *Rural Landholder's Guide to Environmental Law in New South Wales* EDO NSW, 2006 www.edo.org.au/edonsw/site/publications.php
- *Rural Life: Is it for You?* Benjamin, C. Qld. DPI, 2002
- *Rural Living Handbook 2007-2009* Goulburn Mulwaree Council 2006 www.goulburn.nsw.gov.au/environment/4724.html
- *Some precautions when buying rural land* <http://www.dpi.nsw.gov.au/agriculture/livestock/chemical-residue-control2/land>
- *Vital Information for Small Rural Landholders* Dept. of Agriculture, Fisheries and Forestry www.yarn.gov.au/cb_pages/news/biosecurityRualLandholders.php www.daff.gov.au/biosecurity

Note: Local and regional libraries may provide another useful source for obtaining information on this topic including local contacts and specific information relevant to the area.

Contacts

- Forests NSW, NSW Department of Primary Industries www.forest.nsw.gov.au
- Landcare www.landcarensw.org
- Local councils www.dlg.nsw.gov.au
- Northern Rivers Catchment Management Authority www.northern.cma.nsw.gov.au
- NSW Department of Environment and Climate Change www.environment.nsw.gov.au
- NSW Department of Lands www.lands.nsw.gov.au
- NSW Department of Planning www.planning.nsw.gov.au
- NSW Department of Primary Industries www.dpi.nsw.gov.au
- NSW Department of Water and Energy www.dwe.nsw.gov.au
- Rural Lands Protection Boards www.rlpb.org.au



Rural land use and duty of care

CHAPTER

3

Snapshot

The focus of this chapter is to highlight measures for managing and, where possible, avoiding land use conflict. The main audience for this chapter is the rural land owner, although it is relevant to the rural community, rural industries, local government, State government agencies and rural advisers.

Land use conflicts in rural areas can create considerable stress and be costly. This chapter examines the role of current best practice and the role of the individual land user in avoiding and managing land use conflicts when they occur. A fundamental principle underlying this chapter is one of stewardship; caring for the land and managing it in the better interests of all, financially, socially and environmentally. It should be the aim of every farmer or land manager to leave their property in a better condition than when they first found it.

In this chapter we highlight the causes of land use conflicts, i.e. change and diversity in community attitudes, expectations and beliefs about the legitimate use of rural land, and suggest ways of avoiding land use conflict through proactive responses including sound land management and awareness. Typical land use conflict issues in rural areas such as chemical spray drift, odour from intensive agricultural operations, erosion and pollution of waterways, domestic animal attacks on stock and wildlife, noise and dust from quarries and conflict over timber harvest operations are long term and recurring issues on the north coast. Subdivision of rural areas and the changing nature of rural areas has also created potential for conflict.

What are rural land use conflict and interface issues?

Rural land use conflict and interface issues are many and varied. They include complaints over agricultural practices, the impact of primary industries on rural amenity, the threat posed by new residential development on important habitat, and the threat posed by residential development and new rural property owners on adjoining land uses. Land use and neighbour disputes in urban and built up areas are also common though are outside the scope of this handbook.¹

Rural amenity issues are the most common land use conflict issues, followed by environmental protection issues. Rural amenity issues include:

- the impacts of agricultural and rural industry operations on local air quality (odour, pesticides, dust, smoke and particulates)
- impacts on the use and enjoyment of neighbouring land e.g. noise from machinery
- visual impacts associated with rural industry e.g. the use of netting, planting of mono cultures and impacts on views.

Environmental protection issues include soil erosion leading to land and water pollution, clearing of native vegetation and stock access to waterways.

In addition to farming and residential conflicts, there are also conflicts between forestry and mining and residential land uses, and conflicts within the farming sector in rural

areas. The principles of conflict management apply generally to all rural land use conflict situations, so they are not separated in the management and avoidance measures outlined in this chapter. See Chapter 7, *Communication and dispute resolution*, for more information on this issue.

Unresolved land use conflicts and disputes can sometimes escalate and affect community wellbeing. They can also create the potential for community breakdown and lack of confidence in the regulatory systems that are set up to protect the community and the environment from adverse impacts. Impacts of land use conflict include personal stress and anxiety, negative view of an industry or individual landholder, financial and time costs associated with resolving disputes, costs associated with environmental degradation, and further loss of cultural heritage, history, beliefs and values relevant to indigenous and non indigenous communities.

But what about right to farm?

Farming activities can annoy neighbours. Farmers do have a right to farm; they don't have a right to cause a nuisance or adverse effect on the environment or the community.

Just because farming practices have continued over the long term without complaint doesn't mean that they won't become a source of conflict or that farmers won't be pressured to change them, and the way they use the land, in the future. Some farming activities that can really annoy or concern neighbours include the use of chemicals near a dwelling, making excessive noise particularly at night or early morning, odour from animal manures and other products, stray stock and stray domestic animals, poor fences and weeds left uncontrolled. Despite all this, we still need farming and, yes, if you are a rural land holder engaged in primary production you do have a right to farm.

The concept and ideology of the right to farm only extends as far as the law and associated regulations will allow. While there are many activities and practices that farmers and rural land users have a right to carry out, there are others that are not permitted, or that require formal permission. In carrying out any farming practices, however, the land owner or manager does not have a right to cause a nuisance to others or adversely affect the environment.

Rural land use conflict generally arises from one or more of the following activities: the use or abuse of natural resources leading to their degradation; the desire to carry out development that may have a negative impact on the environment or cultural heritage; and impacts on the health of a community and amenity of an area caused by the off-site effects of a land use or activity.



Why do land use conflicts keep occurring?

The rural landscape is a dynamic place. The north coast region, especially, responds vigorously to changes in rural economy, lifestyle, and migrations from the cities. New people with different expectations about what they want to do or how they value the land settle here. These expectations might align with existing residents' ideas, but often they don't. The underlying causes of land use conflict, therefore, appear to be changes in, and mixing of, different values and expectations in the community, often coupled with lack of knowledge of existing or future land uses and ineffective communication between people.

How can we address land use conflict and interface issues?

Everyone who lives and works in a rural area can contribute to reducing and avoiding land use conflicts. Usually no single initiative can effectively reduce or manage land use conflict and interface issues so a suite of initiatives is required.

Avoiding land use conflict issues in the first place is the number one priority, followed by properly managing issues when they arise. In this and the following chapters, we outline steps that can be taken to avoid land use conflicts by rural land users as well as steps that can be taken to manage disputes when they arise.

Principles for avoiding and resolving land use conflict

By learning from the past, we can find many approaches that are worth considering and that have made life easier. We have summarised these lessons into a set of principles for avoiding and managing rural land use conflict issues and for creating a healthy, productive and proactive rural environment.

- **Be proactive.** Think before acting. An example of this is property planning. Farm and property planning has a key role in establishing a sound and informed basis to manage neighbourhood and natural resource issues and any adverse off-site impacts created by your enterprise.
- **Prevention** is better than cure. Avoiding land use conflict by making better and more informed decisions is far better than trying to manage land use conflict and neighbour disputes after they arise and become entrenched.
- **Buffers.** Where a new or encroaching development is proposed, it is your responsibility to include any necessary buffers to neighbouring land uses and to do all that is practical to minimise impacts of the development.
- **Advice before the event.** Seek sound advice before acting, don't rely on gossip or hearsay. Approvals may be needed to carry out any works or construction activities.
- **Codes of practice and best practice guides.** Find out if there are industry codes of practice and current best practice guides for your enterprise, and do your best to follow them.

- **Environmental care.** We all have a legal and social obligation to care for the environment. Every effort must be made to use land and natural resources within their inherent capabilities and limitations. Sound natural resource management underpins sustainable farming enterprises and viable rural industries and communities.
- **Neighbours.** Respect the rights of neighbours – we all want to be acknowledged.
- **Be legal.** Operate within the law but aim higher than the minimum set by law.
- **Communication.** Communicate with neighbours, your industry, key agencies, and non-government organisations. Communication establishes dialogue between neighbours and helps to establish relationships. Relationships can be valuable when negotiation is required to resolve a conflict.
- **Be aware and be informed.** Being aware and informed comes from participation in training and awareness building relevant to your enterprise or situation, getting advice, and building on your knowledge.
- **Responsibility.** Reciprocal rights and obligations should apply to any new development. That is, new rural industry development should comply with and be responsible for all of the necessary setbacks and buffer distances to the environment and community. Similarly, new urban and rural residential development must comply with all necessary setback and buffer distances to existing rural industries.
- **Prior land use practices have precedence.** Routine and lawful rural land management practices will generally have precedence in rural areas, and new or prospective landowners should accept that agricultural and rural industry operations are a part of rural life.
- **Positive responsiveness.** Be responsive; don't dismiss a call from a neighbour about an issue of concern. Continual improvement, training and awareness are critical and necessary if the mistakes of the past are to be addressed. These steps will ensure the opportunity for rural industries to make the necessary adjustments required to adapt to changing external circumstances.

What is good practice and duty of care?

Good or current best rural land use practice is those practices that are carried out on a farm or rural enterprise that demonstrate a commitment to:

- protect the natural resource base
- use resources wisely
- have regard for the legal and social obligations of owning and using rural land.

Duty of care means we must all manage our natural resources taking reasonable steps to prevent harm to the environment, to people and to areas of cultural heritage.

All rural landholders have an obligation to care for the land. This means that those responsible for managing natural resources must take all reasonable and practical steps to protect, maintain and where possible prevent harm to the environment, harm to others and harm to areas of cultural heritage (including Aboriginal culturally significant

areas). This is known as duty of care. In terms of rural land use, there are nine basic components of duty of care:

- using natural resources sustainably
- conserving biological diversity
- avoiding harm to cultural heritage (including Aboriginal culture and artefacts)
- protecting and preventing waters from pollution
- considering neighbours by mitigating the impacts of my activities on the community
- undertaking operations within the law
- documentation and record keeping
- building knowledge and awareness
- continual improvement.

Agriculture is by far the most extensive and prominent land use in NSW and on the north coast. As such, applying good practice in agriculture will have a major influence over the incidence of land use conflict and interface issues in rural areas. *The NSW Policy for Sustainable Agriculture* (1998) defines sustainable agriculture as land use and practices that:

- respond to consumer needs for healthy and high quality food and fibre products
- take full account of the costs of production, including environmental costs and ensure pricing reflects these costs
- protect and restore the resource base on which agriculture depends
- prevent adverse on-site and off-site impacts on the environment and any other sector of the community
- are flexible enough to accommodate regional differences and changing economic environmental and social circumstances such as drought or terms of trade
- are financially viable.

Industry specific codes of practice can be particularly useful in describing and defining the obligations on individual farmers, rural land users and farm workers. These codes usually outline the general duties of care that a farmer and landholder should follow. Contact your industry body or NSW Department of Primary Industries if you are not sure what codes apply to your industry or enterprise.

If your industry does not have a code outlining current best practice or it does have an existing code that is outdated, work with your industry body to develop an agreed code of practice to manage issues common to all operators in the industry. Industry specific codes of practice can be very helpful to individual operators dealing with neighbour complaints and threats of legal action where the code has been verified by the key State agency organisations and where the code is being followed.

Industry bodies can also invite guest speakers from key agencies to industry gatherings to update members of new regulations and new developments. Such initiatives help to build links and partnerships between industry, regulators and extension organisations.

Make sure you have all the codes of practice that are relevant to your industry. If your industry doesn't have one, check to see if there is a code for a similar industry and see how you can adopt or adapt the practices suggested to suit your industry and circumstances.

Good neighbour policy

Isn't a good neighbour policy just plain commonsense?

Yes, in a way it is, but it sometimes only takes a minor change in the relationship between neighbours to show how fragile this can be. There is a saying that 'good fences make for good neighbours'. There is, however, more to it than that.

Being a good neighbour starts with communication.

Good neighbour relations reflect the personal relationships that neighbours build up, often simply through their common interest in the land and fences they share. Building positive good neighbour relationships starts with communication. Neighbours don't have to be friends, although that is desirable and can be a great advantage. Neighbours should, however, be on talking terms, and they should have some understanding of each other so that disputes can be avoided and, if they arise, can be effectively addressed with minimal fuss or stress. If you check the list of principles given earlier, you will recognise that being a good neighbour is reflected in much of this list: communication, knowledge, awareness etc.

In some situations, especially where a neighbour is a major land owner or land management agency or company, the neighbour may even have a policy to guide itself and its employees on how to be a good neighbour. It is important for you to find out what this policy is, if it exists. This will help you understand your neighbour and communicate with them more effectively. You may also wish to develop your own good neighbour policy.



An example of a good neighbour policy is the policy of Forests NSW.

The organisation and its people will:

- be recognised in our communities as environmentally responsible, professional forest managers
- develop and maintain excellent relationships with our neighbours
- be recognised as a good corporate citizen
- work with, and gain the confidence and support of neighbours in managing the community's forests
- understand our neighbours and their needs, and nurture their trust and respect
- actively engage and involve our neighbours in the management of the community's forests.

To achieve this, we will:

- communicate and consult with our neighbours
- seek every opportunity to explain and interpret our management practices
- provide detailed information about proposed activities or works in progress
- actively participate in community forums on issues relating to forests, forest management and community values
- be responsive to neighbour's concerns and professionally conciliate any issues
- co-operate with neighbours to resolve concerns
- encourage and motivate our employees, forest user group, interest group, agents and licensees of Forests NSW to develop a good neighbourly ethic.

A good neighbour policy is just like personal and farm goals in that it is an aspiration, a statement, of what you wish to see and how you plan on undertaking your operations. As such, it does not mean you can't vary from the policy or that there will be times that you don't meet the expressed objectives. The overall benefit is that you have made a commitment to addressing neighbour issues as part of your business and that you will take real and practical steps to achieving the stated goals.

That's all very well for big industry, but what about the small landholder?

Using the Forests NSW good neighbour policy as an example or other good neighbour policies you are familiar with why not try and prepare your own good neighbour policy? Share it with your family or a colleague and see what they think. Try and improve on it following feedback. Consider incorporating the good neighbour policy in your property plan. A good neighbour policy can be equally relevant to people living on rural land next to or near an agricultural enterprise, forestry operation, national park or an extractive industry. The following are considerations you may wish to include in formulating your own policy:

It's a good idea to develop your own good neighbour policy to guide your activities and how you manage relations with your neighbours.

- **Neighbours:** Find out who my neighbours are and their contact details.
- **Communication:** Look for opportunities to establish positive ongoing communication with my neighbours, this can include leaving a phone contact at the front gate for enquiries.
- **Land management:** Work cooperatively on tackling weed, fire and pest management issues.
- **Fences:** Work together to ensure fences are of a suitable standard and condition.
- **Vigilance:** Alert the neighbours of any suspicious activity on their land or incidents that they ought to know about.
- **Access arrangements:** Seek consent or the OK from my neighbour before I use their land for any purpose.

What can I expect out of my own good neighbour policy?

Sharing lifestyles in rural areas comes down to having reasonable expectations of how the land in your area is used, and applying a little bit of give and take. It is important that all people interested in the future of rural areas have an understanding of what life is like in an agricultural production area and understand each others needs.

New rural residents, existing residents and rural producers all have an equal right to live in and enjoy the rural environment – everybody needs to understand the rules governing land use and be prepared for the reality of rural life.

Take what actions you can on your own property to minimise your impacts and talk to your neighbours about any concerns you may have should a misunderstanding arise. To reach agreement about how to address issues co-operatively is by far the best solution.

If the issue develops into a dispute and requires the need for higher levels of assistance to resolve the problem it is more than likely to increase the time and cost involved in getting a result.

Property level checklist to avoid conflicts

As a starting point, the following checklist suggests things to think about at the individual property level to help reduce land use conflict and neighbour disputes.



Checklist for avoiding land use conflict at the individual property level

Research

- What activities on my land do I undertake or do I wish to undertake?
- Do I need any approvals for my current or new land use or activity?
- What are the ecological values of my property?
- Should I seek independent advice?
- What key organisations should I talk to and what do I need to ask?
- Do I need to keep a record of my discussions with key organisations?
- Can my industry body help me in explaining the requirements that apply?
- Do I have to lodge an application for an approval or permit?
- If so, and an approval has been granted, what conditions do they specify?
- Is there a best practice guide or code of practice relevant to my land use or enterprise?
- Have I read and understood the guides and codes relevant to my land use or enterprise?
- Is my proposal or land use likely to cause impacts on my neighbours or adjoining land uses?

Communicate

- Do I need to inform my neighbours about my enterprise or land use before hand?
- Who are my neighbours that may be affected?
- Would my neighbours appreciate knowing what my plans are?

Plan

- Do I have a property plan and have I included the location of neighbours, roads, waterways, native vegetation, wetlands, local school etc. in my plan?
- How will I take these sensitive areas into account in my property plan?
- How might I address the ecological values of my property in the plan?
- Does my property plan adequately address weed and pest control, fences, water and soil management?
- Does my plan accommodate my neighbour's rights to amenity, quality of life, harmony?
- Have I discussed my plan with my neighbours?
- Does my neighbour have a property plan?
- What financial resources will I need to implement the plan?
- What funding sources are available to help in implementing the plan?

Review

- Am I achieving the goals and objectives of my property plan?
- What things could I change to avoid conflict?
- If I receive a complaint or call from a neighbour, how will I deal with it? Chapter 7 gives some positive and practical ways of dealing with this issue.

Farm management system programs

Rural industries and government agencies are developing and using farm management system (FMS) programs to manage farm businesses more profitably and more sustainably. Farm management systems are a valuable tool in supporting and achieving best practice and as a tool to identify and manage risks. Farm management system programs of relevance to north coast farmers and agriculture are listed in the *Further information* section at the end of this chapter.

Property planning

Farm and property planning is one of the most practical ways that land use conflict issues can be avoided. Property planning can be both proactive and reactive and can be valuable in bringing competing issues and priorities together to develop an appropriate plan for the future.

No matter when property planning takes place, it offers an opportunity to critically evaluate your situation and the operating environment where you are working and making a living or profit. Property planning enables you to take time out and think about your plans for your property and the natural and social environment where you are living and working. If you are unsure as to how to go about preparing a property plan, seek out a property planning consultant or talk to your local Landcare community support officer, your catchment management authority or the relevant industry people within NSW Department of Primary Industries.

If you get it right, you should be on much better terms with your neighbours and have developed a positive and constructive relationship with them. You will be building a healthy productive farm, operating within the laws and meeting community expectations. You will be spending less time fixing problems, and through a proactive approach to planning, be avoiding problems in the first place.

Land use buffers

What are they and do I have to have one?

Buffers are often used to minimise the impact of different land uses on neighbours.

Even with the best neighbourly goodwill, there are often requirements and benefits to having buffers between neighbouring land uses, particularly where the adjoining land uses are likely to be incompatible or have off-site impacts. This may be a legal requirement, but most often there is also a practical reason for putting buffers in place. Buffers are, indeed, one of the more widely used management tools. They usually comprise land that has been specifically set aside or targeted for special attention and management in terms of what can be done. Building homes close to a source of smell or noise, for example, imposes unfair conditions on both the future residents and the existing industry; a strip of



land separating these two land uses and used for a purpose that is compatible with both provides a suitable separation for incompatible land uses. Land use buffers and suggested separation arrangements are outlined in more detail in Chapter 6.

You should be aware that buffers between rural land uses and other land uses including sensitive areas are required when:

- there is a requirement to install or provide a buffer as part of an approval
- there is a real risk of breaching environmental regulations and duty care without the incorporation of a buffer in a farm or site management plan.

Buffers between rural land uses and other land uses including sensitive areas are recommended when:

- a guideline or code relevant to the industry, enterprise or practice being undertaken suggests a buffer should be provided and would be beneficial
- an adjoining landholder advises that a buffer is likely to have a positive effect for neighbours
- the buffer would create a positive image for an enterprise, industry or property.

By consulting with your neighbours, these issues can be incorporated into your property plan in a proactive way where all will benefit in creating a more harmonious working and social environment for all parties.

Further information

Publications

- *A producer's guide to starting a small beef feedlot in NSW*
www.agric.nsw.gov.au/reader/feedlotting/guide-small-beef-feedlot
- *Best practice guidelines for growing vegetables*
www.dpi.nsw.gov.au/agriculture/horticulture/vegetables/popular/best-practice
- *Bush Law Handbook: A practical guide to law on the land in NSW* 2nd Edition. Tony Smith, Redfern Legal Centre Publishing, 2005
- *Code of Practice for the Control of Spray Drift and Use of Chemicals in Macadamia Orchards 'A Good Neighbour Policy'* (Australian Strategic Planning Pty Limited, 2003)
- *Code of Practice for Noise Management of On-Farm Processing of Macadamia Nuts 'A good Neighbour Policy'* Australian Strategic Planning Pty Limited, 2003
- *Effluent reuse* www.environment.nsw.gov.au/water/effluent.htm
- *Farming in a Small Way: Your practical guide to rural living and country life*, 4th Edition. Geraghty, G.J. & Larkin, J.G. Edited by Dixon, D. NSW Agriculture, 2003
www.agric.nsw.gov.au/reader/small-farm/farming-in-a-small-way
- *Feed lotting lambs* www.agric.nsw.gov.au/reader/sheep-grazing/dai42ed2.pdf
- *Guidelines for the development of controlled environment horticulture* NSW Department of Primary Industry, 2005
www.dpi.nsw.gov.au/agriculture/horticulture/greenhouse/start/guidelines
- *National Beef Cattle Feedlot Environmental Code of Practice*
www.mla.com.au/NR/rdonlyres/FABEF8B2-475C-4758-BAEF-9BD68D8FF74E/0/Nationalbeeffeedlotcodeofpractice.pdf

- *National environmental guidelines for piggeries* Australian Pork Limited, 2004
www.australianpork.com.au/index.cfm
- *National guidelines for beef cattle feedlots in Australia* 2nd Edition. CSIRO Publishing, 1997 www.publish.csiro.au/pid/114.htm
- *Native vegetation management in NSW – Info. Sheets* CMA
www.nativevegetation.nsw.gov.au
- *Noise* www.environment.nsw.gov.au
- *NSW Guidelines for Dairy Effluent Resource Management* NSW Agriculture, 1999
- *NSW meat chicken farming guidelines: Managing Planning, Development and Environmental Issues* NSW Agriculture, 2004
www.agric.nsw.gov.au/reader/poultry/chicken-farm-guide-splash.htm
- *Odour* www.environment.nsw.gov.au/air/odour.htm
- *Opportunity lot feeding of beef cattle*
www.dpi.nsw.gov.au/agriculture/livestock/beef/feed/publications/lotfeeding
- *Policy for Sustainable Agriculture in New South Wales* NSW Government, 1998
www.dpi.nsw.gov.au/agriculture/resources/land/policies/sustainable
- *Rabbit farming: Planning and development control guidelines* NSW Agriculture, 1999
www.dpi.nsw.gov.au/agriculture/livestock/rabbits/rabbit-farming-planning
- *Rural Landholder's Guide to Environmental Law in New South Wales* Environmental Defenders Office NSW, 2006 www.edo.org.au/edonsw/site/publications.php
- *Turf Farming: Guidelines for consent authorities in New South Wales* NSW Agriculture, 1996
- *Weather for pesticide spraying* Bureau of Meteorology 2004
www.bom.gov.au/info/leaflets/Pesticide-Spraying.pdf

Note: Local and regional libraries may provide another useful source for obtaining information on this topic including local contacts and specific information relevant to the area.

Contacts

- Commonwealth Government – Department of Environment and Heritage
www.deh.gov.au
- Local Government www.dlg.nsw.gov.au
- Meat and Livestock Australia www.mla.com.au
- Northern Rivers Catchment Management Authority www.northern.cma.nsw.gov.au
- NSW Food Authority www.foodauthority.nsw.gov.au
- Department of Environment and Climate Change www.environment.nsw.gov.au
- Department of State and Regional Development www.business.nsw.gov.au
- NSW Farmers Association www.nswfarmers.org.au
- NSW Department of Primary Industries www.dpi.nsw.gov.au
- Rural Industry Organisations – refer to industry contacts, white pages or NSW Department of Primary Industry
- Rural Industry Consultants – refer to industry contacts, white pages or NSW Department of Primary Industry
- Rural Lands Protection Boards www.rlpb.org.au
- Work Cover Authority of NSW www.workcover.nsw.gov.au

Farm management systems

For the north coast these include:

Biological farming and certification – the use of organic, biodynamic and natural farming methods to produce agricultural products that comply with organic farming criteria.

www.dpi.nsw.gov.au/agriculture/farm/organic

www.bfa.com.au

www.australianorganic.com.au

www.ofa.org.au/organic_certification.html

COMPASS – a method for sugar cane growers to assess their on-farm economic and environmental sustainability.

www.canegrowers.com.au/publications-centre/code-of-practice.aspx

MacMan – farm management system for macadamias.

<http://www.dpi.qld.gov.au/macman/>

Conservation farming – an approach to cropping and farming that aims to increase long term profitability, maintain soil structure and soil water, reduce erosion and increase soil organic matter.

www.dpi.nsw.gov.au/agriculture/farm/conservation

Dairying for tomorrow – a national program to develop and implement sound environmental management practices for a sustainable dairy industry. Refer also Targets for Change program – a voluntary change management program focused on the dairy industry.

www.dairyaustralia.com.au/index.php?option=com_content&task=view&id=214&Itemid=108

Environmental management systems (EMS) – a systematic approach to managing the impacts of an enterprise or business on the environment and to improving the environmental performance of an enterprise. Includes a system of business operations that comply with international standard ISO14001.

www.agric.nsw.gov.au/reader/ems

Integrated pest management (IPM) – the use and application of a combination of practical and cost effective ecologically based pest management strategies to reduce pest and disease to acceptable levels.

www.dpi.nsw.gov.au

www.attra.ncat.org

LANDSCAN® – assists farmers and land managers to assess natural resources, to better match land use to land capability and to balance production, profit and sustainability.

www.dpi.nsw.gov.au/agriculture/profarm/courses/agricultural-resource-management/landscan

www.regional.org.au/au/asssi/supersoil2004/s2/oral/2103_keysm.htm

More Beef from Pastures – practical information, guidelines and tools for beef producers to aid in carrying out a successful sustainable beef business.

www.mla.com.au/TopicHierarchy/IndustryPrograms/SouthernBeef/Morebeeffrompastures/default.htm

Prograze® – provides skills for participants to assess pasture characteristics influencing pasture and animal production and to develop pasture and livestock management plans.

www.dpi.nsw.gov.au/agriculture/profarm/courses/pastures-and-rangelands/prograze
www.mla.com.au/TopicHierarchy/InformationCentre/Learning/Producertraining/FeedbaseandPastures/Prograze.htm

Property management planning (PMP) – a tool and process designed for land managers and farm families interested in integrating personal, physical and financial farm management factors into a plan for the future and sustainable farm production.

www.landcareonline.com/resource.asp?rcID=8
www.dpi.nsw.gov.au/agriculture/profarm/courses/agricultural-resource-management/pmp-natural-resource-mgt

StockPlan® – a course for graziers and agribusiness advisors interested in developing their drought management skills.

www.dpi.nsw.gov.au/agriculture/profarm/courses/livestock/stockplan
www.dpi.nsw.gov.au/agriculture/emergency/drought/planning/general/stockplan

Quality assurance – refer to industry specific programs for information and details.

Footnotes

⁷ This handbook focuses on issues relating to land uses that affect key environmental assets and rural production areas. Urban land use and neighbourhood disputes, along with conflicts to do with the development and operation of public infrastructure such as roads, airports, sewage treatment plants, and power lines are not addressed here, although many of the principles and tools may be applicable. Contact your local council, the Department of Environment and Climate Change or the relevant public infrastructure authority for more information on this aspect of land use conflict.



CHAPTER 4

Common rural land use conflict issues: questions and answers

Snapshot

We have looked at many issues to do with conflict over rural land use in this handbook and provided suggestions for how to avoid or resolve them. In this chapter we summarise the most common issues and situations that can result in rural neighbour disputes. Many of these issues and situations were identified as part of the process in developing this handbook. This included feedback from stakeholder meetings and workshops with land managers and land users across the north coast conducted in late 2006 and early 2007.

This chapter will be of interest to anyone involved in land use issues, from agency and Council staff through to landholders, and people thinking about buying a property.

While this chapter does not cover every issue in minute detail it does provide a starting point for discussing solutions, and may give you some ideas for finding answers to the particular issue you are dealing with. The Further information section at the end of the chapter is a handy guide to references that you can use to follow up issues and find out more detailed information.

Note. The Rural Living Handbook 2007–2009 (Goulburn Mulwaree Council 2006), A Resource Kit for rural landholders in the Nambucca, Macleay and Hastings Valleys (2006) and The Bush Law Handbook are valuable references and were used as resources for this chapter.

Finding your way around the issues

To help you find your way around common rural land use conflict issues, we have listed and described them in alphabetical order. If any issue of interest has not been covered, refer to the *Further information* section at the end of this chapter for suggested publications and contacts for answers to other questions.

Burning off and fire hazards

Burning off waste is controlled under the *Protection of the Environment Operation Act 1997* and its regulation, *The Protection of the Environment Operations (Clean Air) Regulation 2002*. The regulation provides a general obligation to stop or minimise air pollution. It prohibits burning some articles, including tyres and certain preservative treated timbers, and allows burning of vegetation (on the property where it grew) in the course of carrying out agricultural operations. In some council areas restrictions apply to burning off and it is recommended that you know what these are before you light your first match.

Always check with the local Rural Fire Service before you start any burning activities, and never burn off when there is a total fire ban or when the fire danger is high.

You must **never** burn during the statutory fire danger period unless you have written permission from the NSW Rural Fire Service (RFS). The bushfire period is usually from 1 October to 1 March. This can be varied by the local council to begin either earlier or finish later in certain areas, so you should check with your local RFS. All approvals are cancelled in times of total fire ban or if the danger is 'high'.

Also, check with your local council on how it applies the regulations to do with burning off. In some council areas people living on rural residential allotments may not be permitted to burn off at all but may be required to remove all rubbish to the local council tip or to mulch it.

The RFS, and at times, the Department of Environment and Climate Change, has the power to ban fires completely for short periods because of weather conditions. *Planning for Bushfire Protection* is an excellent publication for property owners on managing fire and is available on the Rural Fire Service website www.rfs.nsw.gov.au.

The neighbour next door's property is a fire hazard, what can I do? I have checked with the Rural Fire Service and done the appropriate clearing around my house. I have also cleared around my side of the fence line and reduced the amount of flammable material on my property. I notice, however, there is dense undergrowth next door and that fire could potentially threaten my property. What are my rights?

Under the *Rural Fires Act 1997* your neighbour has a legal duty to undertake certain steps to prevent bushfires. Your local council can also issue a notice requiring your neighbour to undertake hazard reduction work on their property. For non compliance the maximum penalty is \$5,500 or 12 months in prison. Additionally, the Rural Fire Service or local council may undertake bushfire reduction at the neighbour's expense. So you can see that discussing the issue with your neighbour over a 'cuppa' is the desirable first option.

For your part, the golden rule is always notify your neighbours well before if you want to do any burning off, consult with and notify the Rural Fire Service.

I wish to burn off dead vegetation along my fence line. What are my rights?

Assuming you have all of the relevant approvals and consents (Rural Fire Service and local council) and you are not burning off during a total fire ban, during the statutory period or during 'high' bushfire danger you may proceed. It is a good idea to consider the neighbour's needs and to consult with them before you light the first match.

Fire permits require you to notify your neighbours at least 24 hours in advance. Let your neighbour know what you are about to undertake and when. Do it on a non washing day and preferably when there is no wind or predicted winds and there is no danger to life, property or livestock. Of course you will read up on the basic procedures of how to safely burn off (Rural Fire Service publications) and have all of the necessary equipment and help on hand.



A fire gets out of control on my property, am I legally responsible for the damage caused to the neighbours property?

The first step is you should dial 000 or the number of your local fire brigade if your fire is out of control.

You are legally responsible for all damage caused. This might also include compensation for the death of a person, damage to livestock or crops and income lost. In addition, you could face a fine and/or even prison if you have not taken all measures to put out the fire, including contacting the local fire brigade, the Rural Fire Service district office and any other relevant government agency depending on the area of the fire.

Fires on farms can be a legitimate land management practice but should not be lit by inexperienced people, except in very contained situations. Don't light a fire without consultation or without the relevant permit from the local Rural Fire Service and any necessary approval from your local council. Fires that escape can destroy property and crops, devastate bushland areas and wildlife and put the lives of others at risk, including fire fighters. Smoke can adversely affect the amenity and health of neighbours as well.

To burn or not to burn?

- Avoid lighting fires and burning off where ever possible. Lighting a fire is risky. Conditions can change. If you don't need to burn, then don't. Mulch and chip timber where possible instead of burning. The mulch created can be composted and used in gardens, orchards or regeneration areas.
- Find out whether you are permitted to burn off in the area where your property is located.
- Always consult your local Rural Fire Service before lighting a fire. They will appreciate knowing what your plans are and will advise if you need a permit.
- Check with your local Rural Fire Service if you need to follow any extra precautions.
- Always give your neighbours 24 hours notice before lighting a fire. It's the law. This way they will know what you are doing, they can be better prepared and can take precautions where necessary.
- Have a plan in case things get out of hand, including relevant telephone numbers. Have water and equipment on hand to put out any spot fires and enough people to help you.
- If in doubt, call for assistance from the local Rural Fire Service before lighting any fire and burning off.



Change of farming practice next door

Rural land use is not a static thing. The property next door may undergo a change in land use. This can be for a variety of reasons, including change of ownership or market forces dictating a change to a more intensive or alternate enterprise.

While there are clear guidelines and consents for intensive industries such as piggeries, feedlots and raising poultry, no authority is typically required to conduct other farming enterprises such as horticulture, tree lots and vegetable production. If the farmer is a member of a grower group or organisation he or she should operate under current best management practice guidelines, which may suggest sound land management practices as well as buffer distances between neighbouring properties, the environment and other enterprises.

The quiet paddock next door with extensive rural views and once used for grazing is now a hub of horticultural activity. I will probably lose the rural amenity of my block, including being subjected to machinery noise, spray drift and loss of view. What can I do to regain my peace and quite plus the rural amenity of my block?

Talk to the neighbour about your concerns. Suggest a mutual buffer of trees or an agreed distance that suits everyone's needs. If you find this approach hard you could write a letter to your next door neighbour outlining your issues. You could also find a mediator, or perhaps another neighbour who may be able to help. The Community Justice Centre provides a free mediation service.

If in any doubt about the neighbour's rights to carry out this new activity talk to your local council and the NSW Department of Primary Industries. If you find that the day-to-day operations of the next door neighbours is really affecting your lifestyle, and all else fails, contact the Environmental Defender's Office for advice or obtain alternative legal advice and help.

Chemical spray drift

The *Pesticides Act 1999* regulates the use of pesticides in NSW. It is designed to reduce the likelihood of injury to people and harm to non-target plants or animals. You must only use registered pesticides, and in the way described on the label. You must read the label before using any pesticides, and store pesticides in the correct containers and keep records of their use. The Department of Environment and Climate Change website has more information on the *Pesticides Act* and the use of pesticides.

Before you can buy or apply pesticides with regard to a rural enterprise you have to complete an accredited course in farm chemical application.

To use pesticides with regards to a rural enterprise you must have completed an accredited course in farm chemical application. You can do this in two ways: by attending a short course or using a self-study pack. A range of chemical training programs are available. NSW

Department of Primary Industries provides both forms under the SMART Train program. Other training providers include TAFE and private industry organisations.

Pesticides can have serious impacts on other enterprises such as organic farming, beekeeping and viticulture. If your neighbour is conducting such activities talk to them about when would be a good time for you to spray so you can minimise any effects on their operation. Consider the recommendations in best practice guidelines for pesticide use as a start, available from the Department of Environment and Climate Change.

My neighbour is using pesticides that are affecting the nearby stream, and spray drift is entering our property. What do I do?

If all other steps of communicating your concerns to the neighbour have failed you can make a confidential report about the alleged misuse of a pesticide, by calling the Environment Line on 131 555. Report the incident as soon as possible, noting and recording as many details as possible using photographs and videos. There are heavy fines for pesticide misuse, including fines of \$60,000 for individuals and \$120,000 for companies.

The requirements of the *Pesticides Act* must be adhered to when applying pesticides. Current best management practices are a useful guide as to how to comply with the legislation though they do not take the place of measures and practices that will lead to compliance with the legislation.

Spray is drifting on to our property and we can smell a chemical odour. What can we do?

Find out some basic information before making accusations. If the source of the spray is your neighbour, find out if this is a one-off event. Did your neighbour have to spray urgently to save a crop? Responsible farmers notify neighbours if carrying out such activities, and they are alert to conditions such as the weather and prevailing winds. Weather is unpredictable, and might have changed during the activity. Talk to your neighbour. If the practice continues and you have concerns about health, environmental and other effects of pesticide use, consider making a confidential report to the Environment Line, phone 131 555. Remember that you have made an allegation and it will need to be investigated, which may take time and require that you provide evidence.



Cultural heritage – connecting with the land

Many properties have items or sites that reflect their natural, European or Aboriginal heritage. European and Aboriginal cultural heritage values are protected under a variety of Acts. Try to become aware of the history of your land and its association with the cultural heritage of the area. You are responsible as a landowner and custodian of your land. So if you want to remove any structures such as houses, sheds, river crossings and yards check with the NSW Heritage Office, your local council and NSW Department of Primary Industries (Fisheries) before going ahead. You may require consents or authorities to remove such items declared as 'relics'.

Similar procedures apply to the destruction or removal of Aboriginal artefacts on your land. These are, at times hard to identify; they include rocks from a bora ring, grinding grooves, a scar tree, rock tools, art work and other artefacts. The local Council's Aboriginal liaison officer, Local Aboriginal Land Council Aboriginal community support officer or local National Parks and Wildlife office of Department of Environment and Climate Change should be able to help you. They will organise a property inspection and advise you on how to protect and manage such places on your land.

What happens if I find any of these items or artefacts on my property?

An item relating to non-Aboriginal settlement of NSW that is over 50 years old is defined as a "relic" and is protected under the *NSW Heritage Act*. Contact the Department of Environment and Climate Change for further details.

Aboriginal cultural heritage items are protected under the *NSW National Parks and Wildlife Act*. If you find or think that you have an item on your property, or want to have your property surveyed in terms of Aboriginal cultural heritage contact your local Department of Environment and Climate Change (NPWS division) office. There is no danger of you losing your rights or bearing any costs if an artefact is found. In fact, you may find it a rewarding experience to work with the local Aboriginal community to protect and conserve not only your property's history but Aboriginal cultural heritage of the area as well.



Development activity next door

You have done your homework before buying your rural allotment. You have consulted the relevant regional strategic plan (Far North Coast, Draft Mid North Coast), made enquires of Council as to the implications of the rural and urban growth strategies and checked the local environmental plan applicable to the property you are interested in. You will also have talked to your local council on the likelihood of new developments and future zoning plus spoken to your solicitor about the *Section 149 Planning Certificate* and possible developments in the area. Can anything upset this thorough groundwork?

You've moved in and have been living the idyllic lifestyle when next door there appears a D9 bulldozer, surveyors, lots of people running around with ties pointing at maps and putting in white sticks. You are now concerned that the housing development next door will affect your lifestyle. What can you do?

Here are some suggestions:

- Ask one of the people in charge on the site what all the activity is all about.
- Contact your local Council and seek clarification on the works.
- Check if the developer or people involved have the necessary approvals. If this is so and the developer follows those approvals then they can legally get on with the work.
- If you are still concerned, present a formal written statement to the developer outlining your issues and how they may be resolved or addressed. Alternatively, contact your local Council or the Department of Planning if the key authority is not local government.
- Obtain legal advice as to your options.
- Don't wait for a problem to arise, keep an eye on advertised development in your area before it occurs.

Developing my property

Your local Council is your source of information about development approvals.

I want to build a new shed or undertake a development on my property. What consents do I need?

The most common permission you will need is a building or development approval. This also applies if you want to build a dam, house or a road.

The local environmental plan (LEP) for your area sets out the types of work that will require development consent, and your local council will be able to tell you what approvals you may need. The consent may require special provisions such as the distance from a neighbour's fence, the size of the dwelling and permitted structures.

Remember there are many pieces of legislation affecting the use of rural land. Local councils are a key authority to contact, but other relevant legislation exists and approvals are required from other agencies. Don't go ahead until you are absolutely sure of what approvals and permits apply to your development and that you have all the necessary paperwork in order.

Domestic pets – dogs and cats

Know where your dogs and cats are. Uncontrolled pets can cause havoc with wildlife and the neighbour's livestock and become a major source of conflict.

Thought must be given to what a domestic cat on the loose at night can do to wildlife or a pack of domestic dogs can do to livestock in one evening. 'Tiger' may be your best friend during the day but if left out at night all of those innate hunting skills will more than outmatch small nocturnal wildlife. Man's best friend with a few mates can easily pull down a wallaby, maim a koala or tear apart a young heifer. Your next door neighbour may have spent years building up the wildlife on their property (see Land for Wildlife) to see their best efforts disappear in a week as a result of the nocturnal hunting activities of domestic pets. Similarly, livestock is the grazier's business, loss of stock and harm to stock by wild and stray dogs is a significant financial issue and highly distressing given the damage these animals can inflict.

It's your responsibility to keep your dogs and cats under control at all times (see *Companion Animals Act 1998*). It is important to remember that rural areas and neighbouring properties are not extended runs for your domestic animals. If you have pets, remember:

- Ensure your dogs and cats are registered with the local council.
- Dogs and cats should be confined within a house and outbuilding area or controlled within your property and should not be left to freely roam.
- Don't let dogs chase wildlife or stock on surrounding properties. Neither wildlife nor other people's stock exist for the enjoyment of stray dogs. Build a fenced-in run for your dog or cat if necessary.
- Don't let cats roam or dump unwanted animals. Feral animals can have significant impacts on wildlife and the environment.
- Don't let dogs continue to bark as it will create a nuisance and may result in unwanted early morning phone calls from your neighbour.
- Stray dogs on a neighbouring property that are a threat to stock can be destroyed without notice.

What are my rights where domestic animals are threatening my lifestyle, enjoyment of the area or limiting my income?

The first thing to do is to contact the owner, if they can be identified, or the local council ranger or Rural Lands Protection Board animal officer. *The Rural Lands Protection Act* requires people occupying land to "suppress and destroy by any lawful" method any "pest animals" (rabbits, wild dogs and feral pigs).

Dumping and burying rubbish on my land

Before disposing of rubbish and waste on your property, consider their contents and the effects they may have on neighbours, waterways and groundwater. Chemical containers should be disposed of in the manner prescribed on the label. Refer also to the Department of Environment and Climate Change for advice on disposing of used chemical containers and your local farm chemical supplier (place of purchase).

Household and similar waste should be taken to a designated council waste facility. Composting organic waste is to be encouraged as is the reuse of timber and other recyclable materials. Scrap metal such as old metal tanks, old roofing iron, old steel posts and old wire will be often be collected and taken away by metal merchants at no cost. Even old cars can be removed by these businesses at minimal to no cost.

Rural lands should not be used as dumping grounds for rubbish or fill from unknown sources. Contact your local council or Department of Environment and Climate Change, phone 131 555 for advice if you have questions or queries. Contaminated fill can affect community health, devalue a property, degrade the environment, lead to clean up costs and the risk of a fine.

Dust

Dust can be generated by farm operations including cultivating, fallow (bare) ground, farm vehicles, livestock yards, feed milling, and spreading fertiliser. It can also be a problem when there is not enough groundcover on paddocks, and when it is windy.

Dust can be major health issue, especially for asthmatics. So what happens when the machinery next door, the quarry opposite or trucks using the adjacent dirt road begin creating daily dust baths coating everything open to the air, including your washing, in a film of dust?

- Farmers should try to limit the generation of dust as far as practical, particularly where it affects the amenity and health of neighbours.
- Try and carry out activities on days that are less windy and where there is less risk of off-site impacts.
- Inform a neighbour if you need to carry out an operation that will generate dust and could affect them.
- Ask your neighbour to close their windows or bring in their washing before your activities turn their house into a dust bowl.
- Vegetated screens and barriers can be planted along property boundaries or at other strategic locations to minimise the affects of dust.

As a neighbour, it is important to be aware that farmers cannot stop all dust and sometimes it is just a consequence of dry conditions and a routine farm management activity.



Fences – three stringer or four stringer?

Boundary fences are the joint responsibility of you and your neighbours.

If you have done your homework correctly before moving in you will have checked the condition of all fences, especially the boundaries. This will also include grids, gates and yards. Your stock escaping into the neighbour's vegetable garden or trampling across lawns, destroying young trees or eroding creek banks will hardly endear you to the neighbour. This also applies where you may want to conduct an enterprise where the current fence is inadequate or poorly maintained, e.g. free range poultry, raising poddy calves or establishing a nursery. There is a well known rural adage; 'good fences make good neighbours'.

What happens if the fence is in disrepair? Whose responsibility is it and who will bear the cost?

Under the *Dividing Fences Act 1991*, adjoining owners (but not government land management agencies) are jointly responsible for maintaining a 'sufficient' dividing fence between their properties. The type and standard of fencing depends on a number of factors including:

- any existing dividing fence
- land use
- privacy and the type of fencing common in the area.

If you damage the boundary fence you are responsible for the cost of repairs.

Although government land management agencies are not bound by the *Dividing Fences Act*, they will often contribute to fence maintenance, as a part of their commitment to being a good neighbour.

Be proactive if you see a problem, e.g. if your neighbour's cattle are getting into your place, rather than getting into an argument with your neighbour, take the first step and offer to share the cost of replacing it. Your neighbour may be waiting for you to take the initiative as they may have concerns about your capacity to meet the costs. You may not have livestock yourself but it is still your shared responsibility to provide and maintain a boundary fence that is common in the area.

If you can't agree with your neighbour on responsibilities for a boundary fence then you can apply to the local court or land board for help in resolving the dispute. You can contact your local Lands Board through the Registrar located in the Department of Lands. However, this should be your last resort. Remember the golden rule; communicate first.

Will I need consent to build a fence?

Usually no, however, be aware that with certain zones in some council areas, particularly environmental protection zones, development consent from the council is required before a fence can be erected. Also, landholders living in the zones and who are not keeping stock should consider a 'tree fence' as it might be more appropriate to the environment of the area.



Land clearing and vegetation

Check with your local Council, Catchment Management Authority or Department of Environment and Climate Change before you clear trees and shrubs.

What consents will I need to clear native vegetation?

If your property is zoned rural, you may need permission to clear native vegetation in most circumstances. It's best to assume that all vegetation on your property is protected until you have clear and unambiguous advice to the contrary. Check the laws in your region with your local Catchment Management Authority (CMA) and your local Council before you clear native trees and shrubs. Enquires regarding private native forestry should be directed to the Department of Environment and Climate Change. As an example, clearing native vegetation maybe against the law if you have threatened species (flora and fauna) on your property so check with your local catchment management authority and Department of Environment and Climate Change (see *Further Information*).

The *Native Vegetation Act 2003* sets the framework for ending broad-scale clearing, encouraging re-vegetation and rewarding farmers for good farm management. It also provides a streamlined process of applying for clearing by using the property vegetation plans (PVPs). A PVP is an agreement between the landholder and the catchment management authority to specify what can be done with native vegetation on a property. The Northern Rivers Catchment Management Authority (NRCMA) has details on the legislation and can provide help with vegetation management (see *Further information* at the end of this chapter).

The *Threatened Species Conservation Act 1995* aims to conserve threatened species, populations and ecological communities of native animals and plants. It lists species that are under threat and must be managed for survival. The Department of Environment and Climate Change administers this Act. Contact the department before clearing any vegetation.

Some local councils have a tree preservation order (TPO) which makes it an offence to damage certain trees on a local government area or zone without a permit issued by the council.

Remember, too, that the clearing of vegetation from any Crown roads ('paper roads') that may run through your property will require the approval of the Department of Lands and, in some cases, Forests NSW.

Obtain expert and qualified advice before clearing native vegetation.

Finally, when you have established that you have the correct permissions, you should then consider the time of year and what you are clearing. What impact are you going to have on the biodiversity on your farm, especially if clearing in the spring? Many woody

weeds provide the only safe nesting place in the spring for small birds in our much-modified landscapes. Over clearing of scrub in the breeding season leads to a decrease in small birds and small marsupials with the predators taking over. What you end up with is crows, currawongs and noisy minors hassling for space. Dead trees and timber are also habitats for native species. The best time to clear may be in autumn or winter. Always obtain expert advice before clearing vegetation.

My neighbour is clearing native trees on his block severely reducing available habitat for wildlife. What do I do?

Your neighbour may have received written consent or an exemption from the Catchment Management Authority or council to conduct a clearing operation. In some instances, e.g. where vegetation is close to power lines and fence lines, consent may not be required. Similarly, if vegetation threatens a dwelling or structures on a property, e.g. it poses a fire risk, clearing may not require consent (*Rural Fires Act 1997*). Clearing native vegetation may also be approved as a part of the property vegetation plan.

If it is at all possible it is best to discuss any concerns you have with your neighbour first. However, if this fails, the appropriate authorities to consult are the Northern Rivers Catchment Management Authority or the local council. If in doubt about habitat or threatened species loss, contact your nearest Department of Environment Conservation and Climate Change office (*Further information*).

Getting help

Unfortunately, there is no one source of advice on all aspects of native vegetation management, partly because there is more than one Act that applies and partly because more than one agency is involved.

The best initial contacts are the Northern Rivers Catchment Management Authority, the local council and Landcare as they have the network and contacts in native vegetation management and can give advice on funding, what training is available and the laws that apply. Contact Department of Environment and Climate Change about private native forestry, threatened species and Aboriginal sites and relics. If you have an enquiry about plantations on private land, contact NSW Department of Primary Industries. For enquires about operations in State forests, contact the Forests NSW division of NSW Department of Primary Industries. See also other useful publications mentioned in the *Further Information* section of this chapter.

The Northern Rivers Catchment Management Authority has a number of brochures outlining the vegetation management arrangements in NSW, including what clearing of vegetation requires approval.



Noise

Noise can be a source of conflict. Talk your neighbour and try to negotiate a solution that can satisfy everyone.

There is any number of potential sources of noise in the countryside: farm machinery, scare guns, low flying agricultural aircraft, motor bikes, livestock weaning and feeding, pump engines and generators. At times they don't seem to stop at night or weekends! Noise can so easily become a source of conflict. Some noise is to be expected in rural areas particularly in areas where primary industries are located and operating.

Our peace and quiet is being continually disturbed by noisy activities next door. What can we do?

Broadly, there is no general prohibition on causing noise on a property, but "offensive noise" may affect others and the *Protection of the Environment Operations Act (Noise Control) Regulation* provides a legislative means to control noise. There are things you can do to minimise conflict with other landholders, the most important of which are as follows:

- **Communication.** If your neighbour is making a noise that you are finding hard to live with, it's important to communicate positively with them by informing them of how the activity is affecting your enjoyment of your block. Can the noise be limited, for example, by moving it away from neighbours, sound proofing, or making the noise during hours that everyone would find more acceptable. By discussing this with them you might be able to work together to find solutions.
- **Become aware and informed.** Some noise, especially from farm machinery, is restricted to short-term seasonal events and may not occur for the rest of the year. So, before leaping on the phone to the nearest government authority, consider the short-term discomfort for a long-term gain in having a good neighbour. Get to know your neighbour! Most agricultural producers will try and be reasonable and accommodate issues you may have in their farm operations. They are however also often running a business. Remember the golden rule: treat others as you would wish to be treated. Initiate neighbourly communication.
- **Other solutions.** If direct communication fails, mediation such as through the Community Justice Centres may be an option to help you reach a mutually agreeable solution. (See *Further information* at the end of this chapter). When you are having trouble resolving a dispute using communication or mediation, the local council might become involved if it is within their area of responsibility. Also, a person affected by offensive noise can seek a noise abatement order through the local court. This should, however, be a last option. The local council or Department of Environment and Climate Change can issue a formal noise notice which may include ongoing restrictions on noise. Some scheduled activities in rural areas may require a pollution licence from the Department of Environment and Climate Change, which may limit noise.

Noxious weeds

Weed control on your farm maybe an issue and have implications for your neighbours. If you let weeds thrive and set seed, your neighbours will be less than impressed as they are more than likely to be affected. Some weeds, especially rag weed, have health implications, especially for people who suffer from allergies or asthma. As with having good fences, good weed management makes for good neighbours. You must realise, however, that weed management does not just mean weed elimination. It is rarely physically or economically possible to fully remove all weeds and their seeds and exclude further entry. It is also good practice to control environmental weeds. These are weeds which are considered to be a threat to the environment but may not be formally declared noxious. Landcare organisations usually have a list of local environmental weeds and management techniques to control them.

Weeds can be a serious economic, environmental and health problem. Make sure you control weeds on your property, and remember, you are obliged under law to control noxious weeds.

The *Noxious Weeds Act 1993* obliges anyone who owns, leases, rents or has control over land to control noxious weeds, and to comply with any weed control notice that a local council or weed authority issues. For more information on noxious weeds in your area contact your local council weeds officer, the local weeds authority or the Northern Rivers Catchment Management Authority. Landcare is also a valuable source of information about weeds, as are local NSW Department of Primary Industries agronomists. You can also find out more about noxious weeds generally at website www.weeds.org.au/noxious.htm.

My neighbour has noxious weeds on his property and is not managing them. The infestation is spreading? What do I do?

Your neighbour may not be aware of their obligations or even what plants are noxious weeds. You could help them out by giving them a copy of the local noxious weed brochure outlining problem weeds. You could also indicate the herbicides and control methods that you have found to be most effective and the timing of spray operations that are most effective. Alternatively, you could suggest they contact the local weed authority for advice and outline the problems of not controlling weeds.

Make sure you have your own house in order before lecturing your neighbour about their weed problems. Your neighbour may not be aware that the weeds are a problem or may have had a health issue or family crisis which has diverted his or her attention away from managing their weeds. Working together, you may be able to help each other to get a desirable outcome. There are also weed spraying contractors who can help with noxious weed eradication. Bush regenerators can also provide professional assistance with weed control.



Odour

Like noise, there are many sources of odours, including piggeries, feedlots, dairies, poultry, sprays, fertiliser, manure spreading, silage, and burning carcasses or crop residues. This is the nature of rural areas! However, how often do we hear a question like the following?

What do I do about odours from my neighbour's property?

There are legislative controls over odours. However, getting to know your neighbours and their practices will help.

- **Communication.** If you do have an issue with odours, the best place to start is by talking to the neighbour. Sometimes, they will have lived with the smells most of their lives and may be oblivious to them. Sometimes, they can find simple steps to reduce odours
- **Be aware and informed.** Some odours may only last one or two days, e.g. the application of fertiliser such as animal waste products. Smells from the application of herbicides or pesticides may also just be a one- or two-day seasonal thing. Knowing this will help you accept these short-term issues. Importantly, if you are new to the area, do your homework before buying your property by visiting the area at various times throughout the day, and checking the surrounding agricultural enterprises. By doing this you should be able to anticipate issues such as odour.
- **Will your enterprise or activities be producing odours?** If you plan a land use that is likely to produce odours, it is best to first check with your local council. Importantly, you should discuss issues with your neighbours or at least give an indication of potential odour issues before any major problems develop. They will probably appreciate knowing beforehand that organic fertiliser is about to be applied or that some other operation that is likely to generate odour is about to take place.
- **Permanent odours.** Some persistent odours may not be able to be addressed easily. Many odour-producing rural enterprises may have a pollution licence from the Department of Environment and Climate Change and will be operating within their licence anyway, e.g. large piggeries, poultry farms and feedlots. If in any doubt about your rights on this issue, contact your local council or the Department of Environment and Climate Change.
- **Legislation.** Local councils are mainly responsible for the legislation controlling odour, except for larger premises, which the Department of Environment and Climate Change regulates. Odour needs to be managed within the limits of the *Protection of the Environment Operations Act* and any applicable conditions on development approvals.



Proximity to national parks, State forests and Crown reserves

If your property is next to a national park, State forest or Crown reserve you will need to know if there are any extra responsibilities in managing your land. Similarly, if you are concerned about any issues, whether they be fences, fire hazard reduction, weeds or feral pests, contact the National Parks and Wildlife division of Department of Environment and Climate Change for issues to do with national parks; Forests NSW for issues to do with State forests; and the Department of Lands for issues to do with Crown reserves.

You will find that these agencies will be operating under a 'good neighbour policy' with respect to neighbouring landowners and will provide you with valuable information on the management principles they have adopted. See *Further Information* for more details

Roads and right-of-ways

Country roads are usually narrow, and at times potholed, dusty, poorly sign posted and unpredictable. The road toll on county roads bears witness to this. You will be sharing your local roads with cattle trucks, farm machinery, stock, tourists, wildlife, the school bus, locals and school children. It is your responsibility as someone sharing the road to respect the rights of others, and their safety and wellbeing. Reckless driving, moving unlit farm machinery at night, driving under the influence or letting your unaccompanied stock out without the adequate warning signs are all culpable activities.

In some instances you may share a road going either through your property or those of others. This brings on other responsibilities including shutting gates, road maintenance, notifying others of your activities in using the road (moving machinery, increased truck movements, stock movement, harvesting), keeping down the dust and limiting your speed.

Things you will need to think about, especially the legal implications, are: your responsibilities in shared costs associated with maintaining the road; accidents involving stock; obligations in moving heavy machinery; installation of grids and gates; dust; and noise. Many of these issues may require professional legal advice if they cannot be solved in a mutually cooperative way with your neighbour.

The topographical map for my area and original property plan show Crown roads, sometimes referred to as paper roads, crossing my property.

What is my responsibility in maintaining these roads? Can I buy the road? What is an enclosure permit? These are questions which can be resolved by contacting your nearest Department of Lands for advice or consulting their website

www.lands.nsw.gov.au/crown_land/roads.



Soil erosion

Poor cultivation practices, inappropriate soil management, overgrazing, drought, over clearing, and stock access to streams and water courses are some primary causes of soil erosion.

Poor soil management is poor farming practice and makes no environmental or economic sense. It can also be a cause of neighbour complaint, especially where your property is “moving next door” or into the adjoining river or stream. As an owner of rural land, it is vital to protect soil and water resources. Allowing soil to be washed into waterways is likely to constitute water pollution and this is an offence under the *Protection of the Environment Operation Act 1977*.

Waterways are public assets and have important ecological values as well as downstream functions and uses. Nutrients and pollutants entering waterways damage the environment and can be dangerous to humans and stock. The NSW Department of Primary Industries has a range of publications on managing soils (see *Further information* section at the end of this chapter).

What do I do if sediment from the neighbour’s property is fouling a waterway we share?

Raise your concerns with your neighbour and discuss the on-farm and downstream consequences and possible options.

Refer to our neighbour best practice guidelines in Chapter 3 and dispute resolution techniques in Chapter 7. While it is not your responsibility to become an advisor to your neighbour and it may not be appreciated, sharing concerns and knowledge and information can be helpful. You may suggest that both of you attend an upcoming field day where relevant management practices will be showcased. If the issue continues, bring the matter to the attention of the industry body, the local council or NSW Department of Primary Industries.

The *Rivers and Foreshores Improvement Act 1948*, controls activities near rivers, streams, estuaries and lakes. A permit is necessary for any earthworks in these areas. The *Fisheries Management Act* may also apply to works in and around waterways and wetlands. Contact the Department of Environment and Climate Change and NSW Department of Primary Industries for advice.



Stock

Straying stock can be a problem in rural areas, especially if you are absent from the property for a period of time.

Two pieces of legislation that deal with straying stock are the *Rural Lands Protection Act 1989* (RLP) and the *Impounding Act 1993*. Under the *RLP Act*, stock are considered to be 'abandoned' if they are left unattended on a public road or public land. Abandoned or trespassing animals may be impounded by a Rural Lands Protection Board officer or council ranger and there is a fee to have them released. A fine also may be imposed. Occupiers of private land can impound any animals that stray on to it. If you know the owners of the stock you must inform them within 24 hours. Straying stock should not be kept for more than four days before being sent to the pound. If you don't know who owns the stock, they should be sent to the pound within 48 hours.

Landholders have a responsibility under the *Prevention of Cruelty to Animals Act 1986* to feed and care for any animals which are impounded on their land. You can recover any costs associated with the care of straying stock from their owner.

The Rural Lands Protection Board shares responsibilities for stock health with NSW Department of Primary Industries. If a herd or flock appears to be in ill health contact the local Rural Lands Protection Board district veterinarian, especially if the death of one of your stock is suspicious or untimely. For individual animal problems and other farm animals, e.g. the house cow, horse, and companion animals, contact a private veterinary practitioner. Details can be found on the Rural Lands Protection Board website www.rlpb.org.au or in the white pages of the phone book.

The neighbour's stock is forever on the road into town, making it especially dangerous at night. What are my rights?

People who have stock out on a public road or travelling stock reserve (TSR) may only do so with a permit from the local Rural Lands Protection Board or local Council. They also need to erect signs to warn motorists that stock are out on the road reserve.

The first thing for you to do is ask whether your neighbour has a permit for the stock to be out on the road or TSR. If an animal kept on a neighbouring farm is causing problems of noise, smell, health or presenting a danger, you may need to seek legal advice, however, it is much better to work out the problem by negotiation.

Note that dead stock must be disposed of in a way that avoids nuisance and does not pollute water. Pollution offences are addressed in the *Protection of the Environment Operations Act*. Some local Councils have a fact sheet with suggestions on the disposal of dead animals.



Threatened species

How do I know if I have a threatened species on my property?

Some species of native plants and animals are protected under the *Threatened Species Conservation Act 1995*, and all native flora and fauna are protected under the *National Parks and Wildlife Act 1974*. It is a criminal offence to harm threatened animals, pick threatened plants, or harm the habitat of threatened species.

To make sure you don't contravene any legislation, contact the Department of Environment and Climate Change and your local Council before doing any significant work on your property to determine whether there are any special requirements that apply in the area to do with native trees and threatened species. Note the special provisions in place to protect threatened species such as the koala and its habitat. You may wish to consider entering into a conservation agreement as part of a farm plan to protect and enhance the farm's biodiversity for future generations.

Trespass

Trespass occurs when people do not have permission to cross or enter another person's property. Permission to enter another person's property can be withdrawn using a sign, a letter or a specific verbal request that a person leave a property. There are civil and criminal remedies for trespass so if it is a problem, seek specialist legal help as the laws of trespass can be extremely complex and there are many misconceptions about it.

If trespass is an ongoing issue it is best to seek legal advice. There can also be insurance risks and potential for the property owner to be in breach of their duty of care towards others so, once again, seek qualified legal advice.

Some points to note are:

- If you need or want to enter a neighbour's property and there is no public way or easement permitting this, seek permission first.
- If someone enters your property without permission, find out what their intentions are first before demanding they leave; they may have a legitimate reason to be on your property.
- If trespass includes an intention to act unlawfully or damage property or is highly suspicious, then contact the police and warn your neighbours.
- Agreements should be in writing wherever possible as they help avoid misunderstandings and disputes about access to the property.
- If entering another person's property when retrieving stray stock, it is good practice to let the owner or property manager know the reasons, the details of the stock you are retrieving, the part of the property you will be entering and how long you expect to be on the property.

The *Fisheries Management Act 1994* allows people to fish in certain inland waters (subject to other provisions of the Act) and to take fish from a river or creek provided a person is in a boat on these waters or is on the bed of the river or creek. Fishing from privately owned land, i.e. the bank of a stream, without the consent of the land owner is not authorised by the *Fisheries Management Act* nor is access over another person's property

to gain access to a river or creek. In these cases, permission should be sought and granted before entering private property.

For information about trespass obtain professional legal advice or alternatively phone the Police Assistance Line on 131 444 or your nearest local police. In an emergency, telephone 000.

Views and amenity

The views that people enjoy from their residence in a rural area are often one of the key features that made them buy a property and wish to live in a rural area. Activities that block out these views, whether intentional or unintentional, are likely to be met with opposition and annoyance. Your neighbours don't own the view they enjoy but they do deserve to be recognised before carrying out a farm development such as planting trees or undertaking works that will affect their views. Important points to remember are:

- Consider the views of neighbours when undertaking your property plan.
- Take all practical measures to not affect the view of a neighbour.
- If you are likely to affect your neighbour's view, consult them and work with them to find agreeable options before you go ahead with a farm development plan.
- If you feel you have been affected by your neighbour's activity or development, as a first step try to contact them and discuss your concerns. Obtain their side of the issue so you are better informed.
- Consider what you can do to mitigate the impacts on your views caused by your neighbour's activities.
- If the matter is serious enough, contact your local Council and seek expert advice.



Waste water management systems – you’re standing in it!

Most rural properties are on septic systems or alternative waste water management systems. The responsibility for their maintenance is on you, the owner of the property. Overloaded septic systems draining into watercourses and neighbouring properties is just not acceptable.

You are responsible for ensuring the system does not adversely impact on the environment and human health. Councils audit waste water management systems. If you are unsure of your responsibilities, including installation, necessary management guidelines and required consents, contact your local council, local plumber or installer for advice. You or your neighbour can be fined for inefficient and non compliant systems.

Also, be aware that waste water treatment systems may contaminate nearby groundwater. For this reason it is not recommended that you use water from bores for domestic purposes when the bore is located near a waste water management system.

Note that if you are buying a property with its own on-site waste water management system, make sure that the details of the system are attached to the contract of sale. As a part of the sales contract, arrange for a council inspection of the system before you buy the property.

Water and aquatic issues

The right to the control and use the flow of all water in rivers, lakes and aquifers and water that occurs naturally on or below the surface of land is held by the State government. The *Water Management Act 2000* is the main Act for managing water in NSW, although other legislation affects development and activities in and around waterways and wetlands.

At the time of writing some water sharing plans are already in place on the north coast. These dictate how and whether surface water or groundwater will be shared between the environment, irrigation, stock and domestic and town water supply. To make things confusing, until water sharing plans are in place in all north coast catchments the *Water Act 1912* still regulates most activities to do with water licensing. You will need a water licence to irrigate and for many agricultural and commercial uses. To obtain a water licence, or if you have any issue relating to water on your property, contact the Department of Water and Energy.

There are special instances where you will not require a licence (harvestable rights). This relates to where you are obtaining water for domestic or limited stock use. If you are unsure, contact the Department of Water and Energy. Many rural residential blocks are on town water which will be under the control of a water authority or local council.

For information on water quality issues for human consumption contact Department of Health or refer to their website

www.health.nsw.gov.au/public-health/ehb/water/drinkwater.html.

You must not dispose of rubbish, place rubbish or animal manure in or near a watercourse or groundwater source (well, bore, excavation or dam). Also, on-site waste water management systems can contaminate nearby groundwater systems

including bores and wells. Rainwater tanks are recommended for potable water for domestic use on farms, when a reticulated town water supply is not available.

If you have done your homework before purchasing your property you will have made sure that there is adequate water to meet your future stock and domestic needs, especially during dry periods. Being a wise and conservation-minded landowner you would have also installed rainwater tanks and checked out whether there is available groundwater if things really get tough.

Overnight the stream runs dry. I have investigated and found that the neighbour upstream is irrigating pasture and the stream flow has stopped. What can I do?

Your neighbour may be in breach of his access licence conditions. It may, however, have been accidental and a one-off event. The first step is to communicate your concern to your neighbour. If the activity continues contact the Department of Water and Energy. If it is a breach of the neighbour's water access licence then the Department of Water and Energy may undertake compliance action.

The next door neighbour upstream is building a dam on the fence line to capture run off into our stream. What do I do?

Your neighbour cannot alter the manner, especially the entry point, in which water enters your property without approval. The Department of Water and Energy is responsible for granting approvals and related compliance issues.

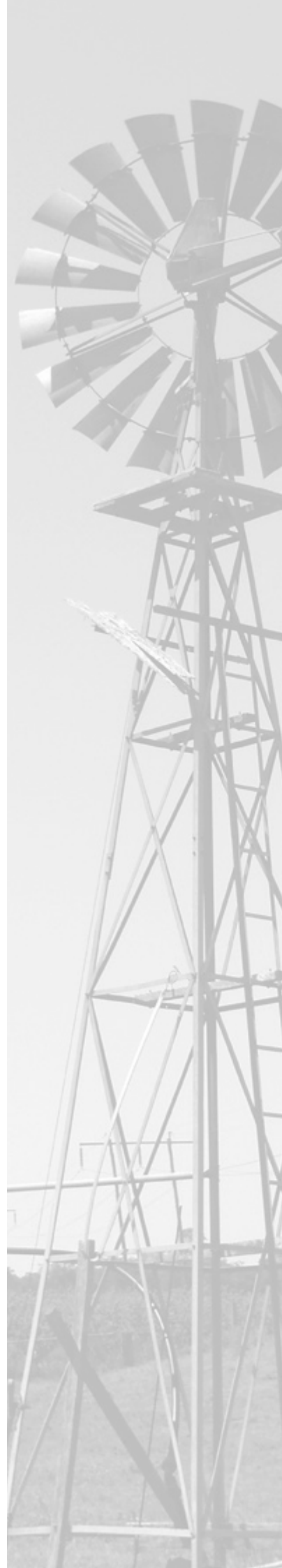
Do I need permission to take water?

If you have a basic landholder right to extract water from your stream for domestic and stock purposes you will not require a licence. This includes water for gardens, vegetables and limited stock use. Should you wish to sell or barter produce derived from this water use you will need a water access licence. If you want to irrigate either from a surface water source or a groundwater source, you will most likely need a water access licence. Talk to the Department of Water and Energy about what you can access under your basic landholder right.

What approvals do I need to build a dam and how large can I build it?

If you want to build a dam on your property to use water for irrigation you are entitled to 10 per cent of the estimated average run off to fill your dam without requiring a water licence. This is called your 'harvestable right', the size of which will depend on the size of your property and the rainfall run off co-efficient for the locality. To find out what size dam you can build without requiring a licence contact the Department of Water and Energy or for general information on irrigation contact NSW Department of Primary Industries (see *Further information* section at the end of this chapter). It is also a good idea to contact your local Council as additional consents may be required. This will apply to any work where water flow is either captured or diverted including groundwater.

Note: Licences to irrigate from surface water sources such as rivers and streams are embargoed on the north coast and are no longer being allocated by the Department of Water and Energy. If you need a licence to irrigate, you will need to make sure your property already has a water licence or enter the water market where you can buy



an allocation on a temporary or permanent basis. Groundwater licences may still be available for your area but it is recommended that you contact the Department of Water and Energy to check. If your neighbour has a water access licence, they may be willing to trade or lease you some water.

What happens in times of drought?

Stock and domestic water must be wisely used, especially during drought. Having your sprinkler going in the middle of the day watering your two acres of lawn will not endear you to the irrigator next door who is under 'cease-to-pump conditions' and watching his crops fail or trees die. During times of drought or water shortages restrictions may be placed on your ability to access water.

Announcements are made over Rural ABC radio but if you are in any doubt as to your access rights contact the Department of Water and Energy. Town water restrictions will be the concern of local councils. There are large fines in place, including the loss of your water licence, should you be accessing water illegally.

My neighbour has altered the flow conditions on his property. In times of heavy rain my property floods, which threatens buildings and livestock. What do I do?

Your neighbour cannot alter the manner, especially the entry point, in which water enters your property without approval. The Department of Water and Energy is responsible for granting approvals and related compliance issues.

What other legislation applies around water?

The legal system is complex and most activities are likely to be controlled or affected by legislation. For instance, works in and around waterways and wetlands may require approval under the *Fisheries Management Act 1994*. A permit is required for aquaculture, to carry out dredge and reclamation works, to harm marine vegetation and to obstruct the free passage of fish.

Contact NSW Department of Primary Industries if you are planning on undertaking works or an activity that may be near or within a waterway, groundwater source or wetland or may impact on the aquatic environment. Examples of development and works involving water that may require a permit from NSW Department of Primary Industries include fish hatcheries, jetties, boat ramps, causeways, bridges, dams, weirs, floodgates, levee banks, marinas, dredging, channelisation or realignment of waterways, foreshore stabilisation, boardwalks and development that may affect marine vegetation such as mangroves and seagrasses.

For a full list of some of the most relevant legislation affecting rural land, refer to the NSW government website. Always obtain legal advice before undertaking works or an activity that may require an approval.



Further information

Publications

- *A Resource Kit for rural landholders in the Nambucca, Macleay and Hastings Valleys* (2006) Northern Rivers Catchment Management Authority
- *Bush Law Handbook: A practical guide to law on the land in NSW* 2nd Edition. Tony Smith, Redfern Legal Centre Publishing, 2005
- *Forest facts, North East Forestry Region* – Forests NSW, Department of Primary Industries www.dpi.nsw.gov.au/aboutus/resources/factsheets/forestfacts
- *Integrated Development Assessment Process – Information on NSW Department of Primary Industries (Fisheries Management Act) requirements: A guide for applicants* NSW Department of Primary Industry 2006
- *Living and working with macadamias: answers to common questions* NSW Department of Primary Industry Primefact 257, 2007 www.dpi.nsw.gov.au/agriculture/horticulture/nuts/general-information/macadamias-answers
- *Put yourself in the picture: Caring for your small rural property* NSW Department of Primary Industry 2006 www.tocal.nsw.edu.au/reader/tocal-publications/pyitp-book
- *Rural Landholder's Guide to Environmental Law in New South Wales* Environmental Defenders Office NSW, 2006 www.edo.org.au/edonsw/site/publications.php
- *Some precautions when buying rural land* NSW Department of Primary Industry Agnote Gen-044, 2004 www.agric.nsw.gov.au/reader/natres-land
- *Vital Information for Small Rural Landholders* Department of Agriculture, Fisheries and Forestry www.yarn.gov.au/cb_pages/news/biosecurityRuralLandholders.php
www.daff.gov.au/biosecurity
- *Weather for pesticide spraying* Bureau of Meteorology 2004
www.bom.gov.au/info/leaflets/Pesticide-Spraying.pdf
- *The Rural Living Handbook 2007–2009* Goulburn Mulwaree Council 2006

Note: Local and regional libraries may provide another useful source for obtaining information on this topic including local contacts and specific information relevant to the area.

Contacts

- Environmental Defenders Office www.edo.org.au
- Forests NSW, Department of Primary Industries www.forest.nsw.gov.au
- Landcare www.landcare.nsw.org/
- Local government www.dlg.nsw.gov.au
- Northern Rivers Catchment Management Authority www.northern.cma.nsw.gov.au
- NSW Department of Environment and Climate Change www.environment.nsw.gov.au
- NSW Department of Lands www.lands.nsw.gov.au
- NSW Department of Planning www.planning.nsw.gov.au
- NSW Department of Primary Industries www.dpi.nsw.gov.au
- NSW Department of Water and Energy www.dwe.nsw.gov.au
- NSW Law and Legal Advice www.nsw.gov.au/law.asp
www.lawaccess.nsw.gov.au, www.law4u.com.au/nsw

Policies and plans

CHAPTER 5

Snapshot

This chapter is designed to help local government and land users manage rural land use conflict and interface issues both during strategic planning activities and in preparing local environmental plans (LEPs). The aim is to ensure that future local strategic planning and local environmental plans, especially LEPs, play their role in reducing land use conflict relevant to key environmental assets and rural production areas.

This chapter contains:

- *summaries of statutory provisions to be addressed in making plans to better manage land use conflict issues*
- *guiding principles to be used in local strategic planning and in developing new LEPs*
- *a review of the LEP template (introduced in 2006), and guidelines on how to make use of this new environmental planning instrument to address land use conflict and interface issues.*

It also outlines planning principles and strategies and has suggestions to help local government avoid future land use conflict and interface issues, especially through the statutory planning system.

Note. *Because legislation and policy change often, the advice and recommendations in this handbook should not be relied on in preparing, reviewing or amending local environmental plans. They should be taken as a guide only, and you should always check the current status of legislation and policy.*

Avoiding and reducing land use conflict through land use planning

Managing land use conflict and interface issues requires land managers, decision makers and planners to have access to a range of tools and methods. This chapter outlines one of the most important of these, and gives example to illustrate where and how they can be used. While they should be familiar to government planners, it is also important for other land managers and users to understand the tools and methods planners are working with. This allows everyone involved in an issue to do with land use conflict to work together to solve the problem. This is called land use planning.

Land use planning has the unique and important role of being able to manage land use to allow the best use of any part of the landscape. While it often concerns itself with conflict issues, it also allows us to put in place strategies that will help avoid conflicts in the first place. This means that while you might have to adopt land use planning tools to manage an existing issue (reactive management), the ideal is that they will be used to create a situation that limits the possibilities for land use conflict in the future (strategic management). Whether you are a land manager, a land user, or a planner, it is important that you understand these tools and how they can be used.

Examples of tools for land use management include:

- **preferred and priority land uses**, which identify preferred and priority land uses for every parcel of land in each local government area. These are called “land use zones”.
- **permissible land uses**, which define permissible land uses in each land use zone
- **future settlement**, which identifies the location of future rural and urban settlements
- **rules** defining things such as how land can be subdivided into smaller parcels
- **guidelines** for matters such as how a new development should be assessed.

Planning principles

Before we look at specific environmental planning instruments, it is important to think about planning principles to avoid and reduce land use conflict and interface issues.

The NSW Land & Environment Court defines a planning principle as a

statement of a desirable outcome from a chain of reasoning aimed at reaching, or a list of appropriate matters to be considered in making a planning decision.

Importantly, although principles are general statements and are often dismissed as being not specific enough, they are designed to be applied to individual situations so there is some consistency of approach. Planning principles can be legally binding and need to be considered with the planning policies and plans of local authorities. Planning principles can help with making a planning decision where there is a gap in policy (i.e. no clear direction), or where a policy is unclear or may be interpreted in several ways. You can find more on the NSW Land & Environment Court’s principles and examples at their website: www.lawlink.nsw.gov.au/lawlink/lec/ll_ec.nsf/pages/LEC_planningprinciples.

Given the many instruments available to guide land use planning, it is likely you will come across many principles for good environmental management. While some are specific to certain situations (there’s an example over the page), others are more generic.

In this section we capture the principles that apply across the board. They are a guide to best practice planning and help identify how the best decisions can be reached. Think about how you can apply these principles to the areas of land use management you are involved in.

What principles should apply to all State, regional and local government strategic policy development, planning and management?

Land use planning and policy should take into account the broad principles described in the following table.



Table 4: Principles when planning and implementing land use policies

Principle	Aims
Ecologically sustainable development, precaution and community engagement	Promote sustainable development based on the principles of ecologically sustainable development, the precautionary principle, and genuine community engagement.
Consistency throughout the planning system	To be consistent with all local government and State plans, strategies and directions.
Protection of natural resources	Protect primary rural industries (agriculture, forestry, mining, aquaculture, fisheries), their resources, potential future primary industries, and significant rural landscapes.
Protection of environmental assets	Protect key environmental assets, including high conservation value vegetation and ecosystems, ecosystem corridors, waterways, endangered ecological communities and key habitats.
Recognition of Indigenous values	Recognise Aboriginal cultural heritage, with early culturally-appropriate consultation with the relevant Aboriginal community.
Avoid incompatibility	Ensure that local, regional or State natural and built resources are not unreasonably constrained by nearby incompatible land uses.
Avoid and reconcile land use conflict	Avoid and reconcile land use conflict and interface issues between land uses in adjoining zones and land uses within the same zone.

These principles, which at times can be legally binding, place a number of responsibilities on all parties to land use planning. Importantly, they encourage responsibility to:

- plan for adequate separation between conflicting land uses
- assess, as early as possible in the planning process, risks of conflict created by changes of land use and new development in rural areas
- avoid or minimise land use conflict
- aim to reconcile existing conflicts
- be aware that potential land use conflict is often triggered by intensification of land use at the interfaces between rural, urban and/or sensitive environments.

What does this mean in practice?

This is all very well, but how do principles and responsibilities translate into planning practice? Let's look at how these principles might be applied. Where an environmental planner is primarily concerned with rural land management, he or she will most likely adhere to guiding principles similar to the following:

- *rural land use takes precedence over non-rural land uses in rural areas*
- *landscape values of rural lands should be protected*
- *different values of rural lands should be co-managed*
- *rural land use should be protected from residential encroachment*
- *current best practice rural land use management should be adopted*
- *agricultural land should remain in large parcels for future rural use*
- *loss of agricultural viability should not justify conversion of rural land to non-rural uses.*

Ask yourself how you will apply these principles and guidelines to your area of interest. Obviously you have specific conditions and environmental constraints to work within, plus a range of specific objectives and ideal outcomes. How can you align them with these principles?

State legislation and policy: involving rural land use conflicts

Table 5 contains an overview of legislation which is relevant to rural land use. Legislation affecting land and resource use is one of the fundamental and key strategies for addressing land use conflicts.

Table 5: NSW Legislation relevant to rural land use and reducing land use conflict

Legislation	Key issues controlled	Lead organisation/ contact
<i>Environment Planning and Assessment Act 1979</i>	• Local Environmental Plans • Zoning and development controls • Environmental impact assessment procedures • Review and appeals Land and Environment Court	Dept of Planning
<i>Local Government Act 1994</i>	• Broad planning and environmental responsibility • Opportunity for additional 'nuisance' controls, including domestic animals • Review and appeals to Land and Environment Court	Local Government
<i>Water Management Act 2000</i> <i>Water Act 1912</i>	• Water licensing and compliance • Groundwater and surface water extraction • Building a dam • Activities adjacent to or in streams	Dept of Water and Energy

cont./65

Table 5 cont.

Legislation	Key issues controlled	Lead organisation/ contact
<i>Protection of the Environment Operations Act 1997</i>	• Pollution regulation – noise, odour, waste, pollution, air pollution (burning) • Sets strict standards and penalties • Notices to persons breaching Act • Negotiation commonly used to resolve ‘incidents’	Local Government Dept of Environment and Climate Change
<i>Native Vegetation Act 2003</i>	• Clearing of native vegetation and conservation • Enhancement of native vegetation • Private Native Forestry	Catchment Management Authority Dept of Environment and Climate Change
<i>Threatened Species Conservation Act 1995</i>	• Protected flora and fauna on private and public lands.	Dept of Environment and Climate Change Dept of Primary Industries
<i>Fisheries Management Act 1994</i>	• Works that may impact on aquatic habitat • Works in waterways or wetlands (dredging, reclamation and obstructions to free passage of fish) • Threatened aquatic species • Aquaculture	Dept of Primary Industries
<i>Forestry Act 1916</i>	• Regulates forestry activity within State forests and other Crown lands	Forests NSW Division of NSW Dept of Primary Industries
<i>Dividing Fences Act 1991</i>	• Establishment of a new fence or maintenance of an existing fence	Local Court Local Land Boards
<i>National Parks and Wildlife Act 1974</i>	• Protection of native flora and fauna • Protection of Aboriginal sites	Dept of Environment and Climate Change
<i>Rivers and Foreshores Improvement Act 1948</i>	• Works in or adjacent to waterways or streams.	Dept of Water and Energy
<i>Soil Conservation Act 1938</i>	• Soil conservation • Land management	Dept of Lands
<i>Noxious Weeds Act 1993</i>	• Noxious weeds	Local or regional weed authority

cont. /66

Table 5 cont.

Legislation	Key issues controlled	Lead organisation/ contact
<i>Pesticides Act 1999</i>	• Use of pesticides • Spray drift	Dept of Environment and Climate Change
<i>Rural Fires Act 1997</i>	• Burning in rural areas	Rural Fire Service
<i>Rural Lands Protection Act 1998</i>	• Keeping of stock • Pest animals including wild dogs	Rural Land Protection Boards
<i>Plantation and Reforestation Act 1999</i>	• Establishing planted forests	Dept of Primary Industries

Each State government agency also has its own policies and guidelines. If you are involved in an issue managed by a particular government agency it is important that you know about the policies and guidelines that are relevant. Key State government departments in NSW with an active role in land use planning include:

- Department of Planning
- Department of Environment and Climate Change
- Department of Primary Industries
- Department of Water and Energy
- Department of Local Government.

Planning instruments and local planning controls and guidelines are outlined in this chapter. For the underlying policies and related acts, you will need to contact the relevant State agencies or go to the NSW government portal, website www.nsw.gov.au, then follow links to Law & Justice > The NSW Legal System > Legislation. You can also get there through: www.legislation.nsw.gov.au.

An overview of the environmental law and land use planning framework and planning hierarchy that operates in NSW is presented at Figure 1. Following Figure 1 is a description of the key elements of the planning framework.



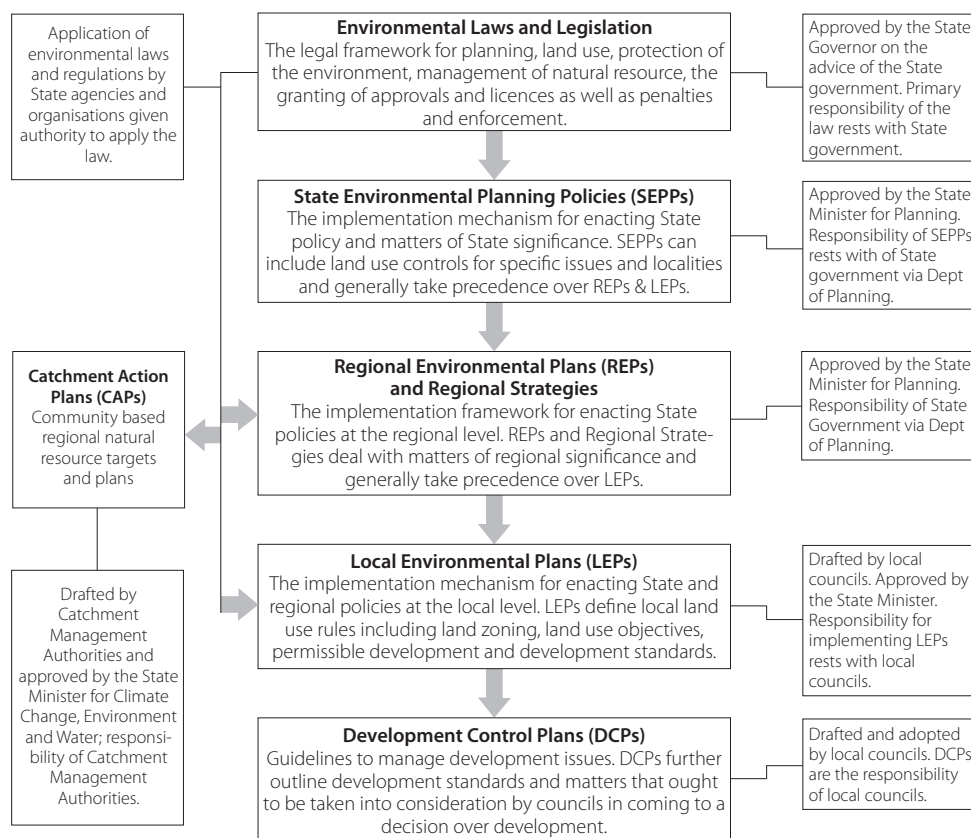


Figure 1: The environmental law and land use planning framework in NSW

Environmental Planning and Assessment Act

Land use planning in NSW is primarily governed by an Act of parliament called the *Environmental Planning and Assessment Act 1979*. This is usually abbreviated to the EP&A Act. The Act's main aim is:

The proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.

How does the EP&A Act meet this aim? It does this by:

- encouraging good and appropriate management of natural and artificial resources
- promoting and coordinating orderly and economic land use
- protecting, providing and coordinating communication and utility services
- providing public use land
- providing and coordinating community services and facilities
- protecting the environment, including native animals, plants and habitats
- encouraging ecologically sustainable development
- providing affordable housing
- sharing the responsibility for environmental planning with all levels of NSW government
- increasing the opportunity for public involvement and participation in environmental management.

You can find the EP&A Act at website www.legislation.nsw.gov.au.

How does the EP&A Act work?

The EP&A Act is made up of eight parts. The important ones for land use planning issues are parts 3, 4 and 5. Part 3 is to do with the preparation and use of environmental planning instruments (EPIs) and development control plans (DCPs), Part 4 deals with development applications, and Part 5 with works and developments that do not require development consent but do require a licence or approval.

Under Section 117 of the EP&A Act the Minister for Planning can make local planning directions about the preparation of draft local environmental plans (LEPs). These directions relate to key planning issues. Key Section 117 Directions of relevance to rural land use planning on the north coast include:

- 1.2 Rural zones
- 1.3 Mining, petroleum production and extractive Industries
- 1.4 Oyster aquaculture
- 2.1 Environmental protection zones
- 2.2 Coastal protection
- 2.3 Heritage conservation
- 4.1 Acid sulfate soils
- 4.3 Flood prone land
- 4.4 Planning for bushfire protection
- 5.1 Implementation of regional strategies
- 5.3 Farmland of State and regional significance on the NSW far north coast.

For information on Section 117 Directions and local planning matters contact the NSW Department of Planning or go to their website
<http://www.planning.nsw.gov.au/planningsystem/local.asp>.

Underlying environmental planning instruments

- State environmental planning policies (SEPPs)
- Regional environmental plans (REPs) and Regional Strategies
- Local environmental plans (LEPs).

State environmental planning policies (SEPPs)

A core document in environmental planning is the State Environmental Planning Policy. This is often abbreviated to SEPP. These policies are prepared by the NSW State government and cover many issues including primary industry development, coastal development, environmental protection, infrastructure and contaminated lands.

What does a State environmental planning policy (SEPP) do? A SEPP sets State planning policy on particular issues and will prevail over a local environmental plan. SEPPs can enable and prohibit various land uses or activities within specific areas, and can prescribe development application and environmental assessment processes.

How do I find out what State environmental planning policy (SEPPs) might affect my land or proposed development? The NSW Department of Planning is responsible for drafting and managing SEPPs. You can get a complete, current list of SEPPs from the

department's website as well as previous and repealed ones, along with a description and explanation of the rules and provisions associated with each SEPP.

To find out more about SEPPs, go to website

www.planning.nsw.gov.au/planningsystem/legislation_instruments.asp.

Or go to www.planning.nsw.gov.au/ and follow links through 'The Planning System' and 'Legislation and planning instruments'.

Which SEPPs apply to the north coast? There are many SEPPs governing a wide range of environmental issues. So which SEPPs will you most likely need to know about for the north coast? As they are continually being reviewed, repealed, replaced, and rationalised, your first port of call to find out about SEPPs and policies that apply to specific areas and issues should be the relevant local council. You can also consult the NSW Department of Planning or you can go to NSW Government website for a list of SEPPs (www.planning.nsw.gov.au/planningsystem/sepp.asp).

At the time of writing, relevant SEPPs applicable to the north coast include:

- No. 14 – Coastal Wetlands
- No. 15 – Rural Land Sharing Communities
- No. 26 – Littoral Rainforest
- No. 30 – Intensive Agriculture
- No. 44 – Koala Habitat Protection
- No. 50 – Canal Estates
- No. 55 – Remediation of Land
- No. 62 – Sustainable Aquaculture
- No. 71 – Coastal Protection
- SEPP (Seniors Living) 2004
- SEPP (Mining, Petroleum Production and Extractive Industries) 2007.

Regional plans and strategies

North Coast Regional Environmental Plan

The North Coast Regional Environmental Plan (NCREP) provides a framework for environmental planning in the north coast region (the area from the Hastings to the Tweed). Its provisions cover the assessment and determination of development applications and the preparation of LEPs, and it requires that an LEP be consistent with the plan. The NCREP:

- defines regional policies to protect the environment, encourage an appropriate built environment, and guide development towards a productive and environmentally-sound future
- consolidates policies, making them appropriate to regional needs and context
- encourages coordination of regional activities related to growth, and optimum community economic and social benefit
- provides a framework for identifying priorities for further work by the planning agencies.

The NCREP will be phased out by 2011 and will be replaced by new regional strategies and LEPs. In the mean time it will maintain its role in providing the framework for environmental planning on the north coast. To view the NCREP, go to either www.austlii.edu.au/au/legis/nsw/consol_reg/ncrep384/ or www.nsw.gov.au/law.asp.

How does the NCREP work?

The plan is implemented by defining objectives for future planning and land development, and policies for preparing local environmental plans and the controlling development. It does this through a wide range of provisions.

It has a number of clauses that are particularly relevant to land use conflict and interface issues. Some of these clauses are listed below.

- #7 Plan preparation—prime crop or pasture land
- #8 Plan preparation—minimum lot size
- #11 Plan preparation—intensive animal industries
- #14 Plan preparation—wetlands or fishery habitats
- #20 Plan preparation—rural land release strategy
- #21 Plan preparation—dwellings on rural land
- #25 Plan preparation—state forests
- #29 Plan preparation—natural areas and water catchments
- #38 Plan preparation—urban land release strategy

Examples of how NCREP clauses can help address land use conflict and interface issues

The NCREP clauses provide a wide-ranging set of guidelines and controls on planning processes that allow planners to address the guiding principles for strategic and statutory planning to avoid land use conflict. In general, the principles require that all planning be consistent with all local government and State plans, strategies and directions, and be based on concepts of ecologically sustainable development, the precautionary principle, and community engagement. As well, the principles require that important landscape and social attributes be protected, particularly rural industries, environmental assets, and cultural heritage. Underlying these is the desire to avoid land use conflict, especially by mitigating the possibilities of constraining land use by nearby incompatible land use, and planning to avoid conflict or interface issues on adjoining land.

Many of the NCREP clauses help with applying such principles, and indeed their provisions overlap in ensuring the principles are enacted. There are common strands throughout the NCREP. For example, it has requirements to do with subdivision, minimum allotment sizes, the separation of zones for incompatible activities, and the need for detail analyses of potential land use or development consents. While such clauses focus on retaining, for example, farmland, they also enable future land uses to be identified. Here are three examples to show how the principles can be applied.



Example 1: Environmental consideration and community consultation. Clause 20 sets conditions for LEPs, rural land release strategies, and identifying land suitable for rural housing. A Council should not, for example, prepare a draft LEP for rural land permitting rural residential or small holding development unless:

- it has prepared a rural land release strategy for the whole of its area
- the Director-General of the Department of Planning has approved the strategy
- the draft plan is consistent with that strategy.

In addition, the NCREP requires that any strategy for rural land release for housing give preference to areas that meet a range of environmental conditions, and that copies of rural land release strategies be available to all interested parties.

Example 2: Avoiding conflicting land uses. Clause 38 sets conditions for urban land release strategies so that local governments cannot prepare environmental plans allowing significant urban growth without an urban land release strategy for the whole of their area. Importantly, an environmental plan should give preference to urban growth next to existing urban land and discourage urban growth in other significant locations. These significant locations include land characterised by: high agricultural capability; current agricultural use; environmental hazard; conservation value; heritage, environmental or cultural significance; a rural character and heritage significance of villages and small coastal settlements. The environmental plan should allow for the need to maintain the character and significance of rural land and settlements, and provide substantial buffer areas between coastal urban centres to avoid uninterrupted coastal development.

Example 3: Protecting natural resources. The NCREP provides guidance on how planners should treat natural resources. Clause 25, for example, defines discrete local environmental plan zoning for State forests, allowing for forestry activities by or on behalf of the NSW Forestry Commission without council consent. This recognises the specific management requirements for such forests. In the same way, clauses 14 and 29 require that an LEP for land containing rivers, wetlands, fishery habitats, significant natural vegetation, wildlife habitat, scenic areas or potential wildlife corridors should include an environment protection zone. This is supported by limitations and consent conditions for developments such as agriculture, vegetation clearance, and land filling or draining of land, along with requirements for detailed analyses, environmental audits or water quality studies prepared by the relevant authorities. There are similar requirements for scenic protection or escarpment preservation zonings; tree preservation orders are required under Clause 29.

Far North Coast and Draft Mid North Coast regional strategies

There are two regional strategies for the north coast; the *Far North Coast Regional Strategy* and the *Draft Mid North Coast Regional Strategy*. Both were released in December 2006, and will be used to guide strategic land use planning in the north coast region up to 2031. The *Far North Coast Strategy* applies to Tweed, Byron, Ballina, Lismore, Kyogle and Richmond Valley, while the *Mid North Coast Strategy* applies to Clarence Valley, Coffs Harbour, Bellingen, Nambucca, Kempsey, Port Macquarie Hastings, Greater Taree and Great Lakes. While the *Draft Mid North Coast Regional Strategy* was a draft at

the time of publication of this handbook, it is expected that its official status will be confirmed in the very near future.

New LEPs must be consistent with the objectives and provisions of these strategies. For copies of the strategies go to the NSW Department of Planning website:

- *Far North Coast Regional Strategy*
www.planning.nsw.gov.au/plansforaction/northcoast.asp
- *Draft Mid North Coast Regional Strategy*
www.planning.nsw.gov.au/plansforaction/mid_northcoast.asp

The Far North Coast and Draft Mid North Coast Regional strategies predict that the region will face a number of challenges over the next twenty five years as a result of an expected population increase of 150,000 people. Challenges identified by the strategies include:

- improved protection and enhancement of environmental assets, biodiversity and landscape values
- sustainable use of natural resources
- managing population growth to prevent urban sprawl and minimise damage to environmental values and rural production
- building on the region's excellent reputation, high environmental value, tourism, education and horticulture industries.

Key features of the regional strategies of relevance to this handbook include land identified as environmental assets and rural land will be protected from further urban settlement, and include buffers to areas of environmental value, existing land uses and natural hazards.

The regional strategies include maps showing key natural resources of the far north coast and mid north coast. These maps identify environmental assets and rural land as having the following attributes or values:

- existing national park, state forests or crown public reserves
- State or regional environmental and/or biodiversity conservation significance
- strategic or regionally significant interurban breaks or corridors
- a natural resource, including State or regionally significant farmland, regionally significant extractive resources and private forestry plantations
- water catchment, water storage and groundwater resources.

What do the regional strategies do?

The regional strategies address land use interface issues by setting conditions to avoid land use conflict through better environmental management practices and knowledge. Their aim is to improve protection and enhancement of environmental assets, biodiversity and landscape values. The strategies do this by seeking to ensure sustainable management of, and access to, natural resources, and protection of rural landscapes from increased settlement, improve our understanding of Aboriginal and European cultural heritage values, and natural processes such as natural hazards (including climate change), land instability, bushfire and acid sulfate soils. Importantly, they encourage this information to be incorporated into land use planning and natural resource management processes.

How can regional strategies help address land use conflict and interface issues?

The regional strategies aim to support sustainable growth by ensuring adequate land is available and appropriately located to accommodate projected housing and employment needs. They also identify a set of rules for planners to follow that are designed provide methods and planning devices to help avoid land use conflict before permission being given for any particular land use or development. Following are five examples that show how the regional strategies have been used.

Example 1: Encouraging land use zoning. *The Far North Coast Regional Strategy* uses the concept of land use zoning to require that local environmental plans protect and zone land with State or regional environmental, agricultural, vegetation, habitat, waterway, wetland or coastline values. It also limits LEPs by not allowing them, for example, to zone land permitting urban development within the environmental assets and rural land area. The *Draft Mid North Coast Regional Strategy* requires local environmental plans to zone regionally significant farmland to protect agricultural values.

Example 2: Use of buffers. The *Draft Mid North Coast Regional Strategy* advocates the use, in LEPs, of inter-urban breaks between existing and new settlements, and both regional strategies require that new development next to farmland, extractive resources, waterways, wetlands and areas with high value biodiversity incorporates buffers to avoid land use conflict.

Example 3: Strategic decision-making and integration into other planning interests. The *Draft Mid North Coast Regional Strategy* indicates that land cannot be rezoned for urban purposes, unless that re-zoning is consistent with a local growth management strategy agreed between the council and the Department of Planning. Both regional plans require that future rural residential land should only be zoned for release if aligned with a local growth management strategy and the principles of the Settlement Planning Guidelines. Rural residential development in coastal areas must adhere to agreed growth management strategy, while rezoning of land for development within coastal lake catchments should consider the recommendation of any coastal lake sustainability assessment. Dwelling standards in local environmental plans should reflect the regional strategy and objectives of the relevant zones. And finally, planning for rural residential land must be integrated with infrastructure and transport.

Example 4: Identifying standards and constraints. The Regional Strategies identify a wide range of other standards which are to be reflected in local environmental plans. These include: minimum subdivision standards and provisions to limit dwellings in rural and environment protection zones; limiting major health and education facilities to urban areas; and provisions on land fronting watercourses to limit the creation of additional water access rights.

Under the *Far North Coast Regional Strategy*, existing and future rural residential development should not be located where it conflicts or coincides with the other attributes or values listed in the Regional Strategy. The *Far North Coast Regional Strategy* also constrains, for example, new rural residential development in the coastal area, except where development is already zoned or is within an approved rural residential release strategy.

Example 5: Protection of specific resources. Both regional strategies identify mechanisms to protect:

- natural resources used for resource extraction
- environmental assets
- cultural assets and values in the landscape, including Aboriginal heritage.

The *Far North Coast Regional Strategy*, for example, requires that local environmental plans identify land having extractive resources of regional significance. It also requires local environmental plans to permit no more than small-scale tourism development in rural or environment protection zones.

With regard to the protection of environmental assets, the *Far North Coast Regional Strategy* requires that local environmental plans include provisions to encourage the establishment of habitats and corridors in environmental assets and rural land zoning, to zone waterways to reflect their environmental, recreational or cultural values, and to limit the creation of additional water rights on land fronting watercourses. Councils are to be guided in implementing conservation outcomes by a regional conservation plan.

Both regional strategies covering the north coast require that local environmental plans identify and zone land of landscape value which includes scenic and cultural landscapes to protect those values. This means that Aboriginal cultural landscapes are included in the LEP. Consultation with relevant local Aboriginal communities is essential, which in turn requires the establishment and implementation of appropriate protocols and community consultation processes. There is a rich body of information to support this approach. Go to website <http://champ.scu.edu.au/> for protocols when liaising with Aboriginal communities and for planning documents such as Aboriginal cultural heritage management plans, including the *Cobaki, Terranora Broadwater Aboriginal Cultural Heritage Management Plan*.

Northern Rivers Catchment Action Plan

The catchment action plan for the region sets the direction for managing natural resource issues in the Northern Rivers which is to be reflected in local environmental plans and the regional strategies.

The Northern Rivers Catchment Action Plan (NRCAP) identifies two key land use conflict issues:

- natural resource managers are being pressured to modify operations as a response to complaints from parties both next to the resource area (settlement next to farming) and within the area (e.g. organic farming next to traditional farming on important agricultural land)
- pressure on natural resources and the use resulting from conflict with residential uses.

The NRCAP has defined a management target for land use conflict and key natural resources to which this project directly relates as:

By 2016 land use conflict within or adjacent to key environmental assets and rural production areas reduced by 90 per cent (and 40 per cent by 2009).

The land use conflict management target of the NRCAP explains the intent, mechanisms, performance indicators, priorities and examples of activities to do with the management target (LUP3). The resources and key environmental assets referred to in the management target include high value natural resources, State and regionally significant farmland (important agricultural land), high conservation value vegetation and ecosystems, ecosystem corridors, significant mineral deposits and extractive resources.

To achieve the management target, the NRCAP indicates that the Northern Rivers Catchment Management Authority will facilitate activities which will:

- establish and adopt guidelines for averting and dealing with land use conflict, for use by local government, developers and consumers
- establish and adopt codes of practice and structures for avoiding conflict, to be used as part of the land use planning process
- investigate conflict hot spots and suggest ways of resolving them.

The Northern Rivers and Mid North Coast Farmland Mapping Projects are products of the Northern Rivers Catchment Action Plan. Recommendations arising from these projects include the adoption of measures such as buffers and conflict risk assessment to minimise risk of conflict between mapped farmland and encroaching development.

Local environmental plans

Local environmental plans are developed and used by local government for managing local land use planning and development issues. These local environmental plans complement higher order planning instruments and include local planning controls. Local environmental plans (LEPs) are often used in combination with development control plans (DCPs) to manage land use and development. The application of DCPs to reduce rural land use conflict is further described in Chapter 6.

The planning reforms in NSW require all councils to prepare new LEPs over the next three to five years (from 2007). These planning instruments are key mechanisms for achieving the objectives for the NRCMA management target to do with land use conflict and key natural resources. This makes local government a key stakeholder and important partner in managing land use conflict.

Land use conflict and interface issues have a range of causes and require a range of solutions. LEPs are one of the main land use planning tools for avoiding future rural land use conflicts, although their ability to address existing land use conflict issues is limited. The format and content of LEPs are governed by State government requirements. LEPs cannot address land uses that are exempt from the need to obtain development consent or development and activities that fall under Part 3A or Part 5 of the *Environmental Planning & Assessment Act 1979*. Existing or continuing uses as defined in the act also fall outside of the planning system provided by LEPs.

Lismore City Council has identified an opportunity to review Chapter 11 – Buffer Areas of their Development Control Plan as part of the plan to consolidate the DCPs for the city as well as serve as a contribution to the new LEP for Lismore City Council. Lismore Council's DCP Chapter 11 – Buffer Areas is a comprehensive buffer DCP and serves as a useful model for avoiding and reducing land use conflicts at the interface via planning policy and development control.

Standard instrument – local environmental plan

In 2006, changes were made to the LEP instrument to take account of the new local environmental planning system, as enacted through the *Standard Instrument (Local Environmental Plans) Order 2006*. This instrument will be superseded when LEPs come into being by 2011.

In accordance with the order made in 2006, councils are required to prepare a comprehensive LEP for their local government area based on this standard instrument template. LEPs must follow the template format to provide for consistency in the plans and, in particular, the development and application of land use zones. The template provides the basis for all LEPs, and aims to improve communication between parties and reduce costs of interpretation and updating. LEPs will adopt a standardised format with all provisions, definitions and the land use table to be in the same place in every LEP. All councils are expected to have prepared an LEP by mid-2011.

The main components of the LEP standard instrument are summarised below along with an indication of how councils can adapt it to local conditions. The ability to include zones, incorporate optional clauses, reinforce the standard zone objectives with locally specific objectives and provisions gives councils many opportunities to address potential land use conflicts and to put into place conflict avoidance or resolution strategies.

How the LEP standard instrument works

The LEP standard instrument uses three main tools:

- a dictionary of standard definitions that must be adopted
- a land use table outlining standards land use zones and zone objectives
- a set of mandatory and optional clauses, provisions and schedules.

It is important to describe these in detail so land managers can understand how this planning instrument can help them deal with issues of land use conflict. At the core of the LEP standard instrument is the desire to standardise terms and tools across the State, thus guiding councils more clearly in designing their planning rules.

The dictionary: we should all speak the same language. The definitions allow for every council to use the same terms, providing for a common language across the environmental planning systems for both land use terms and technical or administrative terms. This will ensure that zones either within an LEP or across different LEPs are treated in the same way.

Zoning: statewide conformity. The LEP standard instrument defines 34 zones for councils to apply to their particular land areas as appropriate. Each zone has a defined objective, and land use must fulfil that zone's objectives; land uses are listed as being permitted without consent, permitted with consent, or prohibited. There will be defined core objectives, although councils are permitted to identify land uses that fulfil local or regional objectives, and may add other local objectives to a zone. Councils cannot add or modify zones, but may create 'overlay controls' that apply to multiple zones dealing with particular local environment, hazard or design conditions. The intention is to ensure similar land use outcomes across different areas under the same zone.

Clauses, provisions and schedules. The standardisation of the LEP instrument is enforced by 36 mandatory clauses. Compulsory clauses provide the framework under which the LEP operates, set out universal provisions to land use decisions that overlay the LEP's zoning, and relate to provisions about particular environmental situations applying only to some councils (such as coastal zoning). Seven optional clauses provide further universal provisions to land use (e.g. development standards provisions). Councils can add their own local clauses as long as they don't relate to matters already in the optional clauses. They are encouraged, however, to add provisions that help fulfil local or regional strategies.

Finally, each LEP must contain five schedules specifying particular local details applying to the compulsory clauses. These comprise lists of: additional permitted uses; exempt development; complying development; classification and reclassification of public land; and environmental heritage.

More or less flexibility?

Although this system adds greater certainty and consistency to environmental planning, how much flexibility does a local council have?

Councils still have the freedom to choose which zones they use to manage their local areas, to include additional provisions, and to add their own, localised provisions and objectives. Any local provisions etc, however, cannot be counter to standardised provisions or objectives. Similarly, any extra provisions or objectives must be justified in terms of local or regional planning strategies. As well, to ensure high quality planning and decision making, zoning decisions must take account of State environmental planning policies and regional strategies.

Councils are required to consider Ministerial Directions under Section 117 of the Act and advice from the Department of Planning in drafting their LEP. The standard instrument is to be reviewed annually which allows updating to reflect current state policies or Land and Environment Court decisions or hearings or issues raised at the local government level. Additional provisions can be added to better reflect state and regional strategies.

How will it help minimise land use conflict?

There are several ways this system will help minimise land use conflict.

A common standardised language. The central focus of the new LEP template is the standardisation of zoning objectives and definitions. Standardisation of land use terms will provide a basis for a common language between councils and land users. By integrating standardised definitions of acceptable and prohibited land use behaviour and development into other conflict resolution mechanisms, for example, participants will share a common language with which to conduct negotiations. This will be particularly useful for negotiations between land uses across LEP borders or between zoning areas. In this way, standardised terms can provide greater predictability to conflict resolution instruments.

Land use table and zonings: objectives and buffers. Standardisation can be reinforced through the common land use table. By focusing development decisions on preset 'core objectives' as well as different forms of development, the standardised land use zones encourage future development to concentrate potential conflict-

causing land uses in particular areas. Importantly, many of the zones include minimisation of land use conflict as core objectives. This provides powers to limit land uses to locations less likely to cause conflict.

The land use table also includes zones designed as buffer zones; two important examples are the RU6 Rural Transition Zone and the E4 Environmental Living Zone, although others could play similar roles (e.g. R5 Large Lot Residential or RE1 Public Recreation). These zones allow councils to fulfil buffer area strategies, particularly to do with rural and environmental areas. For such zones to work effectively, they will depend on good site specific research and application of the land use conflict avoidance planning principles.

For a full description of each of the new standard LEP zones and their objectives, refer to the NSW Government legislation website: www.legislation.nsw.gov.au (Standard Instrument – Principal Local Environmental Plan via Environmental Planning Instruments in Force).

Optional and local provisions: important opportunities for local responses. The use of optional and local provisions may provide councils with mechanisms to stop predicted or predictable land use conflicts. In particular, for example, certain residential conflicts that are mainly intra-zone may be avoided via the clauses 19 – 23 (subdividing, building height and size). Similarly, optional clause 34 provides for vegetation preservation in certain zones, thus potentially buffering activities in neighbouring zones.

Local provisions can also be tailored to react to or anticipate particular localised land use conflicts. In particular, it is possible to envisage the use of local overlay provisions to create further buffer area mechanisms. As well, local provisions provide a simple mechanism by which other conflict resolution mechanisms could be incorporated into the land use assessment process.

Longer term implications? It is interesting to note that one intention of standardisation of both definitions and land use objectives is to ensure consistency across differing LEPs and zones. While this may not inherently lead to less conflict at interface points, over time it may tend towards decreased diversity of development within each zone. This may act as a mechanism to reduce internal conflicts and, by implication, an evolving environment of conflict avoidance and resolution over time.

And the limitations to minimising conflict?

Of course there are several potentially major limitations to conflict resolution under the new LEP system: promoting widespread understanding of the common language; centralised updating of the LEP; and the rigidity of the system.

Helping land users learning the new common language. The major limitation seems to be that land users need to have a good understanding of the instrument. The idea of using standardised definitions as the basis of a common language for planning and conflict resolution requires that all parties know that language. Indeed, while the universalisation of the instrument may lead to greater understandings among planners, it may have a limited impact on land users in general. This means that to gain the social benefits of the LEP, councils will need to invest in educating the key stakeholders.



Centralised updating of the LEP. We mentioned above that it will be possible for the LEP to be updated on an annual review cycle. This updating, however, will be driven centrally, rather than at local council level. It is presently not clear how the central authority would ensure that both local authorities and non-government stakeholders would gain a knowledge and understanding of future changes. It may be that these people might have particular difficulty with this because of the comparatively complex array of non-LEP planning instruments in the NSW system, such as Ministerial Directions and the SEPPs. Indeed, it may be that general standardisation leads to greater misunderstanding during periods of change than would otherwise be the case. This is an area of uncertainty.

Rigidity of the system. While the combination of being able to add new zone objectives and new provisions provides councils with some degree of localised control, as a standardised document, the new LEP retains a degree of rigidity, particularly in terms of the need to include certain zones and provisions. This may limit more inventive conflict resolution techniques in the future.

Development control plans

Development control plans (DCPs) are a valuable part of the planning system at the local council level. They provide specific and comprehensive guidelines for certain types of development, or for small portions of a local government area.

The detailed guidelines in a DCP are used in addition to the provisions of other legal planning instruments such as the SEPPs, REPs, regional strategies and LEPs. DCPs are important in the planning system because they provide a flexible means of identifying additional development controls and standards for addressing development issues without the need for a formal statutory plan. This planning instrument is described in Chapter 6.

Further information

Publications

- Department of Planning *LEP Practice Note PNo6-002* for specific guidance on applying the new standard zones; you will find that also on the web, at www.planning.nsw.gov.au/planningsystem/pdf/pn06_002_slep_zones_fin.pdf
- *Draft Mid North Coast Regional Strategy 2006* © State of NSW through Department of Planning, December 2006 www.planning.nsw.gov.au
- *Environmental Planning and Assessment Act 1979* (NSW Government) www.austlii.edu.au/au/legis/nsw/consol_act/epaaa1979389/
- *Far North Coast Regional Strategy 2006* © State of NSW through Department of Planning, December 2006 www.planning.nsw.gov.au
- *North Coast Regional Environmental Plan 1988*. NSW Government, Sydney www.austlii.edu.au/au/legis/nsw/consol_reg/ncrep384/
- *Northern Rivers Farmland Protection Project: Final Recommendations*. NSW Department of Planning, 2005 www.northern.cma.nsw.gov.au/projects.html
- *The Environmental Law Handbook, 4th Edition*. Farrier, D. & Stein, P. Redfern Legal Centre Publishing, 2006 www.rlcp.org.au/titles.htm

Contacts

- Local councils www.dlg.nsw.gov.au
- Northern Rivers Catchment Management Authority www.northern.cma.nsw.gov.au
- NSW Department of Environment and Climate Change www.environment.nsw.gov.au
- NSW Department of Primary Industries www.dpi.nsw.gov.au
- NSW Department of Planning www.planning.nsw.gov.au
- NSW Department of Water and Energy www.dwe.nsw.gov.au
- NSW Government www.nsw.gov.au



CHAPTER Development control

6

Snapshot

This chapter is mainly aimed at planning practitioners, proponents of development, assessing officers and land use decision makers as a guide on how to take account of land use conflict and interface issues in development design, development assessment and decision making. Its focus is to avoid and reduce land use conflict between urban development and rural activities and natural resource assets through development design and development control processes that take land use conflict issues into account. It should be read in conjunction with Chapter 5 which provides a more detailed account of preparing local environmental plans to reduce land use conflict.

Note that urban neighbourhood disputes are outside the scope of this work as are issues to do with development and operation of public infrastructure such as roads, airports, sewage treatment plants, power stations and the like.

The major elements contained in this chapter are as follows:

- *an overview of the main land use conflict issues*
- *an explanation of the need to manage land use conflict issues*
- *a summary of the core environmental planning instruments and policies relevant to avoiding land use conflict and interface issues through development control and assessment*
- *a list of core principles to guide development in a way that avoids land use and interface issues*
- *recommendations on information that should be included in a development application to help reduce land use conflicts*
- *a summary of the recommended minimum buffer distances and requirements between development and natural resources assets, and*
- *method for undertaking land use conflict risk assessment.*

Note: *This chapter should be used by consent authorities when assessing development applications involving land uses in rural areas and land uses where there is a potential interface and land use incompatibility. It is also useful for developers as it outlines how to address the key considerations to do with potential conflicts by using risk assessment, design, buffers and conflict risk avoidance strategies. While recommended buffer distances are described in the chapter, if you are planning a development in a rural area or near an environment asset, you should contact your local council to check specific requirements that apply to the site and the type of development you are proposing.*

Introduction

Managing land use conflict and interface issues requires a suite of strategies as outlined in the introductory chapters of this handbook. One key strategy is development control. State environmental planning policies, regional environmental plans and local environmental plans (LEPs) contain development control provisions. LEPs in particular describe the land uses that are permissible and prohibited in each zone within the local government area.

Councils prepare development control plans (DCPs) to establish detailed and consistent development standards and requirements for localities, towns etc. or for specific uses such as rural and rural residential development and subdivision.

DCPs contain more detailed development requirements than a council's LEP normally does. Section 79C of the *Environmental Planning and Assessment Act 1979* requires councils to consider the relevant provisions of any DCP in determining development.

DCPs only apply to developments that require consent under Part 4 of the EP&A Act. This means that potential land use conflicts involving land uses that do not require consent, such as horticulture, cropping and grazing, are not addressed through these plans.

DCPs can be used effectively to reduce the potential for land use conflicts by establishing development application requirements and development standards, in particular minimum buffer distances between incompatible uses.

Development control and assessment has the unique and important role of being able to manage land use conflict issues by using avoidance strategies when development is being planned, assessed and decided (strategic management). Development control can reduce future land use and interface conflict by:

- acknowledging desired and priority land uses for a parcel of land, as defined by the zoning of the land
- only permitting land uses that are consistent with the zone objectives
- requiring the environmental constraints and opportunities of land subject to development to be assessed
- requiring the compatibility of the proposed development with existing and approved land uses on adjoining lands to be assessed
- establishing appropriate application processing and assessment practices that allow for community input and effective decision making
- placing restrictions and requirements on new development to safeguard key environmental assets and to minimise the potential for conflict between land uses
- recognising the use and values of key natural resource assets in decision making
- highlighting risks of land use conflict that can then be used by subsequent land purchasers to make more informed decisions.

Core environmental planning instruments

Chapter 5 provides an overview of the core environmental planning instruments and policies governing strategic and statutory land use planning procedures for the NSW North Coast. The key instruments and policies include the *Environmental Planning and Assessment Act 1979* (EP&A Act), various and relevant State Environmental Planning Policies (SEPPs), the North Coast and Mid North Coast Regional Strategies, the North Coast Regional Environmental Plan and each council's Local Environmental Plan (LEP).

These instruments combine to control the preparation of new planning strategies, land rezoning and, importantly, the requirements for assessment and determination of development applications. Part 5 of the EP&A Act deals with activities, which are works and developments which do not require development consent under Part 4 but do



require a license or approval. Part 3A of the EP&A Act deals with major infrastructure and other projects for which the Minister for Planning is the determining authority.

Industry-specific guidelines also provide details and recommendations to do with best practice, buffers and separation distances and are a recommended starting point for assessing individual development proposals and preparing conditions of consent for specific developments or developing an local government area specific buffer DCP. Contact the relevant industry organisations for the latest accepted codes or a relevant agency. Also refer to relevant guidelines and information available on the internet.

A list of non-statutory policies and guidelines is included in the *Further information* section at the end of this chapter.

Principles to guide development

The following core principles developed by the North Coast Land Use Conflict Working Group representing key natural resource agencies and existing natural resource and planning policy are aimed at assisting land managers, developers, decision makers and residents to minimise land use conflict when planning and assessing future developments. These principles should be used when the potential for a proposal to result in land use conflicts or impact on environmental assets is being assessed.

General

- New development should be consistent with the provisions of the North Coast Regional Environmental Plan, the Far North Coast and Draft Mid North Coast Regional Strategies, all relevant SEPPs and Section 117 directions and have regard to the Northern Rivers Catchment Action Plan.
- Decisions about new development should ensure that the natural and built resources of importance to the local, regional or State economy are not unreasonably constrained, impacted or sterilised by the location of incompatible land uses.
- Buffers between incompatible land uses do not take the place of sound strategic planning though they do offer an added level of conflict risk avoidance in land use planning and development.
- It is the responsibility of the encroaching development to provide the necessary setback and buffer to incompatible land uses. The extent of a buffer should not extend beyond the boundary of the property required to provide the buffer except via negotiation and agreement.
- The most effective means of preventing conflict is to plan for adequate separation between conflicting land uses.
- Potential risks of conflict created by residential expansion towards rural lands should be systematically assessed as early as possible in the planning process.
- New development next to or near to farmland, extractive resources, waterways, wetlands, and areas of high biodiversity value should incorporate buffers to avoid land use conflict.
- Future rural residential land should only be released in accordance with a local growth management strategy agreed to by council and the Department of Planning, and consistent with the *Settlement Planning Guidelines*.

Environmental protection

- Decisions about land use should be based on the principles of ecologically sustainable development, including the application of the precautionary principle and effective community engagement.
- New urban development, rural settlement and other development should be sited and designed to protect key environmental assets and, where possible, enhance environmental assets including high conservation value vegetation and ecosystems, ecosystem corridors, waterways, endangered ecological communities and key habitat.
- New development in rural areas should be sited and designed so that it does not create any additional riparian water rights for stock and domestic purposes.
- The potential for land use conflict and development of mitigation measures should be assessed as part of any proposed intensification of use, in particular proposed residential development at the urban/rural interface and within the rural areas.
- Natural resources and environmental assets should not be damaged, constrained or sterilised by the location of incompatible land uses.

Community engagement

- Community engagement, including consultation with adjoining landowners and operators of 'scheduled premises', should be part of the development planning process to identify and avoid land use conflict.

Protection of resource access and use

- New urban development, rural settlement and other development in rural areas should be sited and designed so they do not interfere with legitimate and routine rural land uses on adjoining lands.
- Landscape values of rural lands should be protected.
- The different values of rural lands should be co-managed.
- Rural land uses should be protected from conflict with residential uses.
- The compatibility of proposed development in rural areas with the rural land uses currently or expected to take place in the locality and on adjoining lands should be documented and assessed before determining an application for new development in rural areas.
- Current best practice and the most likely intensive rural land use should be adopted in assessing the compatibility of adjoining land uses.
- Agricultural farmland should remain available in large contiguous areas for future rural industry activities. Lack of current viability of a property or farming areas is not enough justification to convert rural land to non-rural uses.
- The potential for land use conflict and development of mitigation measures should be assessed as part of any proposed intensification of use, in particular proposed residential development at the urban/rural interface and within the rural areas.
- In rural zones, rural land uses should take precedence over non rural land uses.

Cultural heritage recognition

- Aboriginal cultural heritage should be taken into account in the planning, siting, design and management of developments where there is a threat or perceived threat to Aboriginal cultural values including significant sites and places.
- Early consultation with Aboriginal communities in a culturally appropriate manner is a fundamental prerequisite of any development application where these sensitivities require consideration. Consult the local council's Aboriginal liaison officer or Local Aboriginal Land Council community support officer.

You will find a list of Local Aboriginal Land Councils in the white pages of your local phone book. The Bundjalung Cultural Heritage and Mapping Project website <http://champ.scu.edu.au/> is a useful guide to protocols and other issues relevant to Aboriginal cultural heritage in the northern rivers region. Local councils may have their own Aboriginal cultural heritage management plans which have been incorporated into their LEPs. Aboriginal cultural heritage is to be recognised and protected through development design, development assessment and conditions of consent where relevant. It is recommended that you first contact the Aboriginal Cultural Heritage Unit of the Department of Environment and Climate Change and your local council for further information and assistance.

Development control plan provisions for reducing land use conflict

It is recommended that each council include provisions in a development control plan or within planning policy to address rural land use conflicts. To that end, the following recommendations are suggested.

Development application requirements and checklist

It is recommended that a DCP include the following development application (DA) requirements for all development within rural zones and situations where a risk of land use conflict or land use incompatibility could arise in addition to council's standard DA requirements and those prescribed in the EP&A Act and EPA regulation.

- Submission of a land use conflict risk assessment (LUCRA) for activities and development that require consent within or adjoining rural zoned areas that involve more intensive land use or a risk of conflict with surrounding land uses.
- Environmental assessment of the suitability of any proposed on-site effluent wastewater treatment system assessing the potential impact upon the natural drainage system.
- A plan identifying current adjoining uses and those within the locality of the subject site and including distances from such uses.
- Site plan identifying watercourses, drainage lines, bores, wells, farm dams, wetlands and existing native vegetation within 200 m of the proposed development area.
- Consideration of the potential visual impact the proposal may have upon the locality and its residents.
- Details on proposed buffers from existing uses and the treatment of these buffers.
- Details on any community or agency consultation undertaken in relation to the proposed development.

Key points

Intending development applicants should check with the local Council to find out what development application requirements apply and the information required to accompany a development application.

While the checklist helps to ensure that development applications contain enough detailed information to enable the consent authority to make an appropriate informed decision, compliance with the checklist requirements does not guarantee approval of a proposal, which is determined based on an assessment of the individual merits and circumstances of the proposed development.

Recommended development control plan provisions

A development control plan for avoiding rural land use conflict issues should include:

- principles for avoiding and reducing land use conflict issues
- responsibilities for new development to address land use conflict risks and risks to key environmental assets
- minimum guidelines for assessing land use conflict risk potential and management arrangements to reduce and minimise risks
- guidance on the minimum standards for neighbour consultation and consultation with key and relevant persons and organisations
- a review mechanism for the impact of development on Aboriginal cultural heritage significant sites and the necessary management options in place, including established protocols for consultation with Aboriginal stakeholders, and the ongoing protection and management of such sites
- minimum separation distances between dwellings and primary industry activities
- minimum separation distances between other non primary industry activities and primary industry activities
- minimum separation distances between dwellings and environmental assets
- separation distances between on-site waste water treatment systems and drainage lines
- strategies for dealing with variations to standards and uncertainty
- a means of resolving disputes over setback and buffer requirements
- guidelines for separation and buffer arrangements.

The DCP can also include review mechanisms to check its performance over time.



Land use buffers

Rural land use conflicts come in a variety of different forms. Land use buffers are an accepted land use planning tool and have an important role in reducing risk of land use conflict and impacts between incompatible land uses through separation of land uses. Buffers provide increasing certainty in the planning approval process and minimise the potential for conflict to occur.

It needs to be remembered that conflicts can occur between: individual rural activities and/or natural resource users; commercial land users and residents; land uses and the natural environment. The purpose and application of buffers will vary depending upon the individual circumstances. Buffers are an important tool to reduce land use conflicts but are not the only tool. The role and value of buffers can however be undermined if they are reduced by encroaching land use.

Key points

While buffers are important in managing land use conflicts, they do not lessen the need for sound land use planning practices, in particular the strategic planning processes of appropriate zoning and land use strategy development.

As well, they do not replace the need for the individual assessment of a proposal based upon the specific characteristics of the site, the locality and the proposal itself. Aspects such as scale of development, topographic and climatic conditions, environmental attributes and the nature and sensitivity of uses within the locality will influence the required impact mitigation measures and the separation distances that are considered necessary and appropriate in the circumstances. Innovative solutions to land use conflict and interface issues is to be encouraged.

Role of buffers

Defining minimum buffer distances between incompatible land uses and key natural resource assets is a useful mechanism for reducing and avoiding the threat of land use conflict issues between incompatible land uses. However, buffers have their limitations and need to be used with caution and in combination with other strategies to reduce land use conflict risks and manage interface issues. Chapter 3 describes management practices to reduce land use conflicts, additional to the establishment and maintenance of buffers.

There are various documents that prescribe minimum separation distances between incompatible land uses. Table 6 is a guide to recommended minimum separation distances for primary industries. Table 7 outlines the recommended minimum buffers for environmental assets. Table 8 outlines the recommended minimum buffers for other rural land uses. **The buffers recommended should be used as a starting point and guide only in the absence of any other or more appropriate separation arrangements.** Local and site specific circumstances and application of relevant policies and specific guidelines will dictate the minimum separation required and what is reasonable and appropriate in the circumstances.

It is not possible to prescribe a minimum buffer distance for all interface situations. In such cases, Tables 6–8 include an alternative approach such as site specific assessment. This site specific assessment is comparable to the assessment that would be typically

undertaken to satisfy the requirements of Section 79C of the EP&A Act. The minimum buffer distances need to be used and applied in combination with the planning principles previously outlined to ensure the desired outcome is achieved.

Key points

Complying with an adopted buffer setback will help decrease the potential for conflict though it cannot guarantee that land use conflict and interface issues will be totally removed. Variables such as changes in ownership of adjoining lands, changes in land use and management practices and variable climatic conditions can affect the success of land use buffers.

Similarly, complying with a buffer setback does not guarantee that a development proposal will be approved by the consent authority. Mitigation of land use conflict and the application of land use buffers are part of a broader consideration of environmental, social and economic factors which an approval authority must take into account in determining the merits of a given land use proposal.

Types of buffers

Separation buffers are the most common and involve establishing a physical separation between land uses where conflict could arise. The aim of doing this is to reduce the impacts of the uses solely by distance separation, rather than by any physical means such as earthworks or vegetation planting. These can be fixed separation distances or variable. Fixed separation distances generally apply in the absence of evidence that an alternate lesser buffer will be effective in the circumstances. Variable separation distances are calculated based on the site specific circumstances given factors such as the scale of the development, risk of conflict and risk to the adjoining environment have regard to accepted procedures for assessing these risks. The odour assessment process in NSW involving stationary sources is a form of a variable buffer as it varies according to specifics of the development and the site.

Biological and vegetated buffers are buffers created by vegetation planting and physical landscaping works. They are most commonly designed to reduce visual impact and reduce the potential for airborne-created conflict such as chemical spray drift and dust and can help provide environmental protection through vegetated filter strips and riparian plantings.

Landscape and ecological buffers refer to the use of existing vegetation to help reduce the impacts from development. They are mostly used to protect a sensitive environment by maintaining or enhancing existing habitat and wildlife corridors.

Property management buffers refer to the use of alternative or specialised management practices or actions at the interface between uses where the potential for conflict is high. The aim of these buffers is to reduce the potential of conflict arising in the first place. Examples include siting cattle yards well away from a nearby residence to reduce potential nuisance issues, and adopting a specialised chemical application regime for crops close to a residence or waterways with the aim of minimising off-site impacts on neighbours and the environment.

Other buffers

There are other statutory and recommended buffers that can apply to a specific sites and situations. These include:

- bushfire protection buffers
- mosquito buffers
- airport buffers
- power line buffers
- rifle range buffers
- railway line buffers
- cultural heritage buffers.

Key points

People intending to develop within a rural area or within the rural/residential interface should contact their local council to find out about the buffer requirements specific to their locality, site and the land use proposed.

Similarly, with regard to Aboriginal cultural heritage issues, including significant sites, places and landscapes, it is recommended that you consult with the local council's Aboriginal liaison officer, the Local Aboriginal Land Council community support officer or the Northern Aboriginal Cultural Heritage Section at your closest Department of Environment and Climate Change. Buffer zones and management options will vary according to the significance of a site, its locality, the topography of the land and its relationship to a range of other geographic and culturally relevant factors. Councils such as the Tweed Shire Council have Aboriginal cultural heritage management plans for localities within their shire boundaries for the protection of Aboriginal significant sites and places.

Summary of recommended minimum buffers

The following tables summarise the recommended minimum buffers to help councils develop development control plans and to implement development control procedures that reduce land use conflicts and protect the values of key environmental assets and rural production areas. **The separation distances in the tables represent a synthesis of existing recommended and best practice minimum buffer distances.** As such, and given the varying sources they are drawn from, they represent an approximation of what constitutes best practice and a level of separation that will assist to minimise rural land use conflict at this time while acknowledging that site specific and development specific factors will always play a role in determining the most appropriate level of separation and approaches to conflict avoidance.

It is acknowledged that appropriate buffer distances may vary between proposals and between councils based on local topographic, climate, environmental and social considerations. The minimum buffers recommended are not intended to take the place of local council policy on buffers, setbacks etc, where such policy has been developed and adopted. The recommended minimum buffer distances do not apply to existing developments that have already been approved. The conditions of consent placed on these developments form the minimum standards that these developments should achieve.

Where a new dwelling is proposed on an existing vacant lot that has a dwelling entitlement, the setbacks and buffers normally required may not necessarily be appropriate or practical. In these cases, council will need to use discretion to determine the most appropriate location, design and arrangement for the new dwelling. The principle of conflict avoidance should be maintained and the maximum achievable buffer and conflict avoidance measures implemented.

Table 6: Recommended minimum buffers (metres) for primary industries

(NB: The desirable buffer in the circumstances will be the separation distance and conflict avoidance strategy that protects: community amenity, environmental assets, the carrying out of legitimate rural activities in rural areas and the use of important natural resources.)

	Residential areas & urban development	Rural dwellings	Education facilities & pre-schools	Rural tourist accommodation	Watercourses & wetlands	Bores & wells	Potable water supply/ catchment	Property boundary	Roads
Piggeries ¹ Housing & waste storage	1000	500	1000	500	100	SSD	800	100	100
Waste utilisation area	500	250	250	250	100	SSD	800	20	20
Feedlots ² Yards & waste storage	1000	500	1000	1000	100	SSD	800	100	100
Waste utilisation area	500	250	250	250	100	SSD	800	20	20
Poultry ³ Sheds & waste storage	1000	500	1000	500	100	SSD	800	100	100
Waste utilisation area	500	250	250	250	100	SSD	800	20	20
Dairies ⁴ Sheds & waste storage	500	250	250	250	100	SSD	800	100	100
Waste utilisation area	500	250	250	250	100	SSD	800	20	20
Rabbits ⁵ Wet shed, ponds & irrig.	300	150	150	150	100	SSD	800	50	50
Dry shed	120	60	120	60	100	SSD	800	20	20
Other intensive livestock operations ⁶	500	300	500	300	100	SSD	800	100	100
Grazing of stock	50	50	50	50	BMP	SSD	BMP	NAI	BMP
Sugar cane, cropping & horticulture	300	200	200	200	BMP	SSD	BMP	NAI	BMP
Greenhouse & controlled environment horticulture	200	200	200	200	50	SSD	SSD	50	50
Macadamia de-husking	300	300	300	300	50	SSD	SSD	50	50
Forestry & plantations	SSD	SSD	SSD	SSD	STRC	SSD	SSD	BMP	STRC
Bananas	150	150	150	150	BMP	SSD	SSD	BMP	BMP
Turf farms ⁸	300	200	200	200	50	SSD	SSD	BMP	SSD
Rural industries (incl. feed mills and sawmills)	1000	500	500	500	50	SSD	SSD	SSD	50
Abattoirs	1000	1000	1000	1000	100	SSD	800	100	100
Potentially hazardous or offensive industry	1000	1000	1000	1000	100	SSD	800	100	100
Mining, petroleum, production & extractive industries	500 1000*	500 1000*	500 1000*	500 1000*	SSD	SSD	SSD	SSD	SSD

* Recommended minimum buffer distance for operations involving blasting.

NAI: Not an issue.

SSD: Site specific determination (no standard or simple buffer distance applies).

BMP: Best management practice to apply given site circumstances. Buffer and/or management practice should represent duty of care to the environment and the public and include measures necessary to protect bank stability, maintain riparian vegetation and protect water quality. The incorporation of best management practice measures in property and farm plans is encouraged.

STRC: Subject to relevant codes.

Buffer distances represent the recommendations of the North Coast Land Use Conflict Working Group following a synthesis of existing guidelines and policy. In some cases, specific and relevant guidelines may require larger buffers or lesser buffers than those prescribed may be appropriate in the circumstances.

Notes:

1. Subject to environmental assessment in accordance with National *Environmental Guidelines for Piggeries* (APL 2004) and *Assessment and Management of Odour from Stationary Sources in NSW* (DEC 2006)
2. Subject to environmental assessment in accordance with *NSW Feedlot Manual* (NSW Agriculture 1997) or *A Producers Guide to Starting a Small Beef Feedlot in NSW* (NSW Agriculture, 2001) and *Assessment and Management of Odour from Stationary Sources in NSW* (DEC 2006)
3. Subject to environmental assessment in accordance with *NSW Poultry Farming Guidelines* (NSW Agriculture 1996), *NSW Meat Chicken Guidelines* (NSW Agriculture 2004), *Assessment and Management of Odour from Stationary Sources in NSW* (DEC 2006)
4. Subject to environmental assessment in accordance with *NSW Guidelines for Dairy Effluent Resource Management – Draft* (NSW Agriculture 1999), and *Assessment and Management of Odour from Stationary Sources in NSW* (DEC 2006)
5. Subject environmental assessment in accordance with *Rabbit Farming: Planning and development control guidelines* (NSW Inter-Departmental Committee on Intensive Agriculture, 1999) and environmental assessment in accordance with *Assessment and Management of Odour from Stationary Sources in NSW* (DEC 2006)
6. Subject to environmental assessment in accordance with *Assessment and Management of Odour from Stationary Sources in NSW* (DEC 2006) and any other relevant guideline or policy
7. Subject to environmental assessment in accordance with *Guidelines for the Development of Controlled Environment Horticulture* (NSW DPI 2005)
8. Subject to environmental assessment in accordance with *Turf Farming – Guidelines for Consent Authorities in NSW* (NSW Agriculture 1996)



Table 7: Recommended minimum buffers (metres) for key environmental assets

	Residential areas & urban development	Rural settlement & on-site waste systems	Education facilities & pre-schools	Rural tourist accommodation
Native vegetation/habitat	50	50	50	50
Ecosystem & wildlife corridors	50	50	50	50
Estuaries & major waterways	100	100	100	100
Minor waterways	50*	50*	50*	50*
Wetlands	100	50*	50*	50*
SEPP 26 littoral rainforests	100	100	100	100
State & regionally significant farmland	300	300	300	SSD

* Site assessment is necessary as 50m buffer may be inadequate given groundwater, soil type, topography and site factors.

NAI: Not an issue.

SSD: Site specific determination (no standard or simple buffer distances apply).

STRC: Subject to relevant codes.

Buffer distances represent the recommendations of the North Coast Land Use Conflict Working Group following a synthesis of existing guidelines and policy. In some cases, specific and relevant guidelines may require larger buffers or lesser buffers than those prescribed may be appropriate in the circumstances.



Table 8: Recommended minimum buffers (metres) for other land uses

	Residential areas & urban development	Rural settlement	Education facilities & pre-schools	Rural tourist accommodation
Waste facilities	300	300	300	300
Sewerage works	400	400	400	400
Dip sites ¹	200	200	200	200
Boarding kennels	500	500	500	500
Stock yards including cattle yards	200	200	200	200
Stock homes/stables ²	SSD	SSD	SSD	SSD
Effluent re-use areas ³	SSD	SSD	SSD	SSD

SSD: Site specific determination (no standard buffer distances apply).

Notes:

1. The Cattle Tick Dip Site Management Committee (DIPMAC) recommends a nominal 200 metre radius assessment zone around cattle dip sites. Residential development proposed within this zone should be subject to a contaminated lands assessment to determine the extent of contamination and risks posed by contamination. The assessment and any proposed remediation works must also meet the requirements of *State Environmental Planning Policy No. 55 – Remediation of Land*. Urban encroachment onto working cattle dip sites is to be avoided where possible.
2. Subject to assessment in accordance with NSW Department of Environment and Conservation publication *Environmental Management on the Urban Fringe – Horse Properties on the Rural Urban Fringe, Best Practice Environmental Guide for Horses* (2004).
3. Subject to assessment in accordance with NSW Department of Environment and Conservation publication *Use of Effluent by Irrigation* (2003) or local policy as adopted by individual councils.



Table 9: Sources of information for minimum buffers

Land use or environmental asset	Reference source
Piggeries	<i>National Environmental Guidelines for Piggeries</i> APL 2004 <i>North Coast Guidelines for Subdivision and Development in Agricultural Areas</i> NSW Agriculture 1995 Lismore Development Control Plan Chapter 11 – Buffer Areas Nambucca Shire Council DCP 16 – Rural Buffers (2005)
Feedlots	<i>NSW Feedlot Manual</i> NSW Agriculture 1997 Lismore Development Control Plan Chapter 11 – Buffer Areas Tweed DCP <i>North Coast Guidelines for Subdivision and Development in Agricultural Areas</i> NSW Agriculture 1995 Nambucca Shire Council DCP 16 – Rural Buffers (2005)
Poultry farms	Lismore Development Control Plan Chapter 11 – Buffer Areas Tweed DCP
Dairy farms	Lismore Development Control Plan Chapter 11 – Buffer Areas Tweed DCP <i>North Coast Guidelines for Subdivision and Development in Agricultural Areas</i> NSW Agriculture 1995 Nambucca Shire Council DCP 16 – Rural Buffers (2005) <i>NSW Guidelines for Dairy Effluent Resource Management</i> NSW Agriculture, 1999
Other intensive livestock operations:	Tweed DCP
Grazing	Lismore Development Control Plan Chapter 11 – Buffer Areas Nambucca Shire Council DCP 16 – Rural Buffers (2005)
Sugar cane, cropping & horticulture	<i>North Coast Guidelines for Subdivision and Development in Agricultural Areas</i> (NSW Agriculture) Lismore Development Control Plan Chapter 11 – Buffer Areas <i>Planning Guidelines; Separating Agricultural and Residential Land Uses</i> Qld Department of Natural Resources 1997
Greenhouse & controlled environment Horticulture	<i>North Coast Guidelines for Subdivision and Development in Agricultural Areas</i> NSW Agriculture 1995 <i>Guidelines for the Development of Controlled Environment Horticulture: Planning Greenhouse and Hydroponic Horticulture in NSW</i> NSW DPI 2005
Macadamia de-husking	Lismore Development Control Plan Chapter 11 – Buffer Areas <i>Code of Practice for noise management of on-farm processing of macadamia nuts</i> Australian Strategic Planning Pty Ltd 2003 Nambucca Shire Council DCP 16 – Rural Buffers (2005)
Bananas	Nambucca Shire Council DCP 16 – Rural Buffers (2005) Pesticide Control Order AIR-1 1987
Turf farms	<i>North Coast Guidelines for Subdivision and Development in Agricultural Areas</i> NSW Agriculture 1995
Abattoirs	Lismore Development Control Plan Chapter 11 – Buffer Areas Tweed DCP Nambucca Shire Council DCP 16 – Rural Buffers (2005)
Ecosystems & wildlife corridors Native vegetation/ habitat	State Environmental Planning Policy No. 26 – Littoral Rainforests Lismore Development Control Plan Chapter 11 – Buffer Areas Recommendations of NSW Department of Environment and Climate Change

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Table 9 cont.

Land use or environmental asset	Reference source
Estuaries and major waterways	<i>Policy and Guidelines: Aquatic Habitat and Fish Conservation</i> – NSW Fisheries (1999) Lismore Development Control Plan Chapter 11 – Buffer Areas
Waste facilities	Tweed DCP
Sewerage works	Lismore Development Control Plan Chapter 11 – Buffer Areas Byron DCP Nambucca Shire Council DCP 16 – Rural Buffers (2005)
Dip sites	DIPMAC (NSW Cattle Tick Dip Site Management Committee) <i>North Coast Guidelines for Subdivision and Development in Agricultural Areas</i> NSW Agriculture 1995 Nambucca Shire Council DCP 16 – Rural Buffers (2005)
Stock yards including cattle yards	<i>North Coast Guidelines for Subdivision and Development in Agricultural Areas</i> NSW Agriculture 1995
Boarding kennels	Western Australian EPA Dungog Council DCP
Extractive Industries	Lismore Development Control Plan Chapter 11 – Buffer Areas Tweed DCP Recommendations of NSW DPI Mineral Resources Nambucca Shire Council DCP 16 – Rural Buffers (2005)
State & regionally significant farmland	<i>North Coast Guidelines for Subdivision and Development in Agricultural Areas</i> NSW Agriculture 1995 Northern Rivers Farmland Protection Project and the Mid North Coast Farmland Mapping Project
Rural land uses as listed	<i>Rural Land Use Conflict: Review of Management Techniques</i> Robert J. Smith, Report to Lismore Living Centres, Planning NSW 2003



Variation provisions

In certain circumstances variations from the recommended standard buffer distances may be justified. Councils and government agencies which provide advice or regulate activities have the discretion to approve a reduced buffer or require an increase in the required buffer in the circumstances and to require the implementation of any reasonable conflict avoidance measures.

Buffers can be varied for reasons such as the scale of the proposal, topographic and micro-climatic conditions, technological advancements, operational considerations and arrangements, sensitivity of surrounding lands and land use within the locality.

It is recommended that councils include variation provisions within a DCP which includes buffers and other measures for avoiding conflict as site specific circumstances vary. Applications for variations should be accompanied by justification for the variation and assessment of the implications of the variation of the buffer distance on the values of key environmental assets, rural activities, primary industries and community amenity. In accordance with the principles of ESD, and in the interest of avoiding and reducing rural land use conflict issues, a precautionary approach should be applied to variations.

Variation criteria could include (as adapted from Lismore Development Control Plan Chapter 11 – Buffer Areas and Nambucca Shire Council DCP 17 Rural Buffers 2005):

- the extent, nature and intensity of the adjoining land uses
- the operational characteristics of the adjoining land uses
- the sensitivity of the adjoining and surrounding land uses
- off-site effects likely by the adjoining land uses and the potential to cause conflicts
- the potential land uses of the adjoining and surrounding lands
- topographical features and vegetation which may act to isolate and buffer land uses
- prevailing wind and climatic conditions that could help reduce conflicts
- any other specific mitigating factors.

Applications for variations should be made in writing to the council and presented in report style with the development application and be accompanied by relevant details, descriptions, assessments, maps, photos and plans. The application for variation should have regard to any relevant guidelines, codes and policy.

Land use conflict risk assessment

Land use conflict risk assessment (LUCRA) is an appraisal system developed to identify compatibility of land uses and the potential for conflict between adjoining land uses. It is designed to help proponents of developments and the determining/consent authorities assess the potential for land use conflict. LUCRA is aimed at complementing development control and buffer requirements by providing a more thorough understanding of likely land use conflict issues at an individual development level so as to inform the application of land use conflict avoidance and buffer measures.

The aim of LUCRA is to address land use interface issues and risks between rural land uses in a proactive manner and before the land use proceeds or before a dispute arises and to highlight or recommend strategies that could help minimise conflict.

By undertaking a LUCRA at the individual property and development scale, the real risk of conflict between one land use and an adjoining rural land use can be more accurately identified. Site specific and relevant conflict minimisation and separation strategies can then be negotiated, proposed, implemented and evaluated.

Under LUCRA a number of issues associated with a proposal and other uses within a locality are considered to identify the potential areas of conflict. A simple ranking system is used to identify how serious the risk is.

The land use conflict risk assessment process outlined is a recommended planning and development design tool to avoid or better manage the potential conflicts between different and incompatible land uses in rural areas.

The process is not meant to be applied literally. Rather it should be used as a guide to how to assess the potential for conflict between land uses and the potential implications of the conflict. You can vary and adapt the process according to each particular situation.

The aim of this part of the handbook is not to prescribe a step-by-step process that should be followed. Rather it is meant to encourage planners and developers to proactively avoid land use conflict scenarios by considering the risk of conflict as early in the land use planning process as possible and be in a better position to address risks of conflict through sound planning, good design and responsible operations.

Why assess the risk of conflict?

Conflict can occur between land uses and people in rural areas when the activities or practices associated with one neighbour's land use interfere with another neighbour's enjoyment or use of land. It can also occur where there is a real or perceived environmental impact from an activity.

Land use change is the typical trigger for land use conflict. This change can be in the form of an entirely new land use in a rural area, a more intensive land use or where the environment is modified or perceived to be at risk of degradation. More subtle changes in land use, such as the interests and behaviours of a new neighbour can also lead to tensions between neighbours.

Conflict to do with land use and between neighbours can create serious stress for individuals, increase pressures on adjoining landowners and place additional resource demands on local and State government agencies. Managing this conflict retrospectively can be very hard and might not achieve a resolution resulting in ongoing conflict. Commonly, inequity can be perceived if one party is seen as having achieved a result at the expense of the other party.

Some planning development decisions made in the past have created real potential for conflict between rural land uses and rural neighbours because not enough attention was paid to separating incompatible land uses. It is essential that future land use planning and development decisions be based on an understanding and appreciation of the need to separate incompatible land uses and to adequately manage risk of conflict between land uses at the planning, development design and assessment stages.

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Factors a LUCRA should consider

Site specific factors that LUCRA should consider and address include:

- The nature of the land use change and development proposed. A modest land use change is likely to create a different risk of land use conflict compared to a substantial and extensive land use change.
- The nature of the precinct where the land use change and development is proposed. This provides an understanding of the context of the proposed change and development and may provide some insights into the values and expectations of adjoining land owners and stakeholders.
- The topography, climate and natural features of the site and broader locality which could contribute either to minimising or to exacerbating land use conflict.
- The typical industries and land uses in the area where the development is proposed. This provides for a broad test of compatibility with the dominant existing land uses in the locality.
- The land uses and potential land uses in the vicinity of the proposed development or new land use. Identifying and describing what's happening within a minimum 1000m radius of the subject land and development site help to establish the specific land uses in the locality that are most likely to have some effect on and be affected by the proposed land use or development. This description of surrounding land uses should include discrete land uses such as dwellings, schools, and public places as well as rural industry activities such as intensive animal industries, cropping, agricultural processing industries, aquaculture, mining, petroleum production and extractive industries, plantations and farm forestry.
- Describe and record the main activities of the proposed land use and development as well as how regular these activities are likely to be. Note infrequent activities that are likely to create conflict with neighbouring land uses and be the source of neighbour disputes given our knowledge of issues that can be a trigger for complaints and conflict.
- Describe and record the main activities of the adjoining and surrounding land uses as well as how regular these activities are, including periodic and seasonal activities that have the potential to be a source of complaint or conflict.
- Compare and contrast the proposed and adjoining/surrounding land uses for incompatibility and conflict issues.

After going through these factors, use the risk assessment matrix (Table 10) to assess the risk of conflict between the land uses given the issues involved.



Table 10: Land use conflict risk assessment matrix

Likely consequence from a dispute or conflict arising over the land use or activity		Likelihood of a dispute or conflict arising over the land use or activity.		
		Very likely	Likely	Unlikely
	Major consequences & impacts likely	HIGH	HIGH	MEDIUM
	Modest or periodic consequences & impacts likely	HIGH	MEDIUM	LOW
	Minimal consequences & impacts likely	MEDIUM	LOW	LOW

Rank and record each issue or activity on the risk assessment matrix. After you have done this, for each potential conflict issue identify the management strategies and responses that could help lower the risk of the issue resulting in a dispute and conflict.

Next, summarise the key compatibility and conflict issues and preferred and recommended management strategies to be used to reduce and avoid the risk of conflict resulting from the proposed change in land use and/or development. Buffers of various forms are one of the key tools that can be used to minimise land use conflict risks though they are not the only tool. Include recommended performance targets in the strategies planned where practical and the details of any monitoring that will be used to evaluate the performance of the conflict avoidance strategy.

Where necessary, record and summarise the recommended land use conflict avoidance and minimisation strategy in a management plan. This management plan should describe the conflict risk and compatibility issues, the risk control strategy to avoid or minimise the risk of land use conflict and disputes, the performance measures to be used to monitor achievement and the responsibilities for implementing the conflict risk avoidance and reduction controls outlined.

Reporting the results of a LUCRA

The results of a LUCRA should be included in a development or planning proposal showing how it has informed the location, design and operation of a change in land use and/or development. Any key limitations, unknowns or assumptions in the LUCRA should be documented, and existing codes, policies or guidelines that have been used to develop conflict minimisation strategies should be referenced.

Conflict avoidance and reduction strategies that will involve site design, buffers and other physical measures should be shown in a plan and labelled to show the extent, location and scope of the strategy planned.

Who can undertake a LUCRA?

Undertaking a LUCRA requires insight and experience across a range of land use and resource management issues. Formal or specialised qualifications are not generally necessary though involvement of specialists is to be expected in some cases.

Conflict and land use compatibility assessment requires skills in investigation, research and inquiry, as well as objectivity, impartiality, and the capacity to effectively assess the potential risk given changing circumstances, the dynamics of rural areas and rural industries, the vagaries of climate and the varying expectations of individuals and rural communities.

Some knowledge and understanding of land use conflict policy and specific policies, codes and guidelines is an advantage. A LUCRA is not a foolproof approach to minimising new conflict from arising. The value of a LUCRA is that it is a systematic, consistent and site-specific conflict assessment approach to land use planning and development assessment that reflects the size, scale, location and sensitivity of change in land use and developments taking into consideration the location, scale, practices and sensitivity of adjoining rural land uses.

How much consultation?

Proponents, land owners and consultants undertaking conflict risk assessment will need to make some judgements about how much effort and detail a LUCRA deserves. The relevant council and consent authority or regulatory authorities should be consulted first to determine the level and type of detail required to accompany a development application or proposal.



Further information

Publications

- Aboriginal cultural heritage management including protocols and agreements (www.environment.nsw.gov.au, mapping and <http://champ.scu.edu.au/>)
- Aboriginal Cultural Heritage Management Plans – See Cobaki Terranora Broadwater Aboriginal Cultural Heritage Management Plan www.tweed.nsw.gov.au
- *A Producer's Guide to Starting a Small Beef Cattle Feedlot in NSW (50–1000 head capacity)* NSW Agriculture, 2001
- *Assessment and Management of Odour from Stationary Sources in NSW – Technical framework* DEC, 2006 www.environment.nsw.gov.au
- *Best Practice Environmental Guide for Horses* NSW DEC 2004
- Cultural Heritage Aboriginal Management Project <http://champ.scu.edu.au/>
- *Draft Mid North Coast Regional Strategy 2006* © State of NSW through Department of Planning, December 2006 www.planning.nsw.gov.au
- *Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Waste* DEC 1999
- *Environmental Management on the Urban Fringe – Horse Properties on the Rural Urban Fringe, Best Practice Environmental Guide for Horses* NSW DEC 2004
- *Environmental Planning and Assessment Act 1979*
- *Far North Coast Regional Strategy 2006–31* © State of NSW through Department of Planning, December 2006 www.planning.nsw.gov.au
- *Guidelines for the Development of Controlled Environment Horticulture* (NSW DPI 2005)
- *Health Impact Assessment of Proposed Developments* North Coast Public Health Unit, NSW Health Department, 1997
- *Lismore Development Control Plan Chapter 11 – Buffer Areas*
- *Nambucca Shire Council DCP 16 – Rural Buffers* (2005)
- *National Environmental Guidelines for Piggeries* Aust. Pork Limited 2004
- *NSW Feedlot Manual* NSW Agriculture 1997
- *NSW Guidelines for Dairy Effluent Resource Management – Draft* NSW Agriculture 1999
- *NSW Industrial Noise Policy* NSW EPA, 2000
- *NSW Meat Chicken Farming Guidelines – Managing, Planning, Development and Environmental Issues* (NSW Agriculture 2004)
- *NSW Guidelines for Dairy Effluent Resource Management – Draft* NSW Agriculture 1999
- *NSW Guidelines for the Development of Controlled Environment Horticulture* NSW Agriculture 2005
- *NSW Poultry Farming Guidelines* NSW Agriculture 1996
- *Noise Guide for Local Government* NSW EPA, 2007
- *Northern Rivers Catchment Action Plan* www.northern.cma.nsw.gov.au/publications.html
- *Planning for Bushfire Protection – a Guide for Councils, Planners, Fire Authorities, Developers and Home Owners*, Planning NSW (December 2001)
- Standard Instrument (Local Environmental Plans) Order 2006 and Standard Instrument Principle Local Environmental Plan www.planning.nsw.gov.au

- *Policy for Sustainable Agriculture in New South Wales* NSW Agriculture, 1998
- *Policy on the Protection of Agricultural Land* NSW DPI 2004
- *Policy & Guidelines for Aquatic Habitat Management and Fish Conservation* NSW DPI 1999
- *Policy & Guidelines for Fish Friendly Waterway Crossings* NSW DPI 2003
- *Rabbit Farming – Planning and Development Control Guidelines* NSW Agriculture 1999
- *Restoring the Balance: Guidelines for managing floodgates and drainage systems on coastal floodplains* NSW DPI 2003
- *Spray Drift Management: Principles, Strategies and Supporting Information* PISC, CSIRO, 2002
- *Turf Farming – Guidelines for Consent Authorities in NSW* NSW Agriculture 1996

Note: Local and regional libraries may provide another useful source for obtaining information on this topic including local contacts and specific information relevant to the area.

Contacts

- Department of Planning web-site www.planning.nsw.gov.au for a complete and current list of all environmental planning instruments.
- Individual Councils Local Environmental Plans can be viewed at each Council's website or at the Australasian Legal Information Institute site www.austlii.edu.au
- Northern Rivers Catchment Management Authority www.northern.cma.nsw.gov.au
- NSW Acts and Legislation www.legislation.nsw.gov.au
- NSW Department of Environment and Climate Change www.environment.nsw.gov.au
- NSW Department of Primary Industries www.dpi.nsw.gov.au
- NSW Department of Water and Energy www.dwe.nsw.gov.au



CHAPTER Communication and dispute resolution

7

Snapshot

New rural residents, existing residents and rural producers all have a right to live in and enjoy the rural environment. Sharing lifestyles in rural areas comes down to having informed and reasonable expectations of how the land in your area is used, applying a little bit of give and take, and understanding the rules governing land use. It is important that all people interested in the future of rural areas understand what life is like in a rural environment and appreciate each other's needs.

Information and communication are two of the greatest allies to avoiding disputes and in resolving disputes when they arise.

Avoiding a dispute and conflict in the first instance should be a priority. Take what actions you can on your own property to minimise any impacts on the environment and your neighbours. Talk to your neighbours about any concerns you may have if an issue or misunderstanding arises. Aiming to reach agreement about how to address issues that arise in a cooperative and positive manner is by far the best solution.

If the issue develops into a disagreement and is not readily resolved, it is likely that you will need help, perhaps a third party, and this is likely to increase the time and cost involved in achieving an agreeable outcome.

In this chapter we look at ways of resolving disputes. It assumes that the matter to be resolved is a neighbourhood issue and not a breach of the law. It is not realistic for neighbours to resolve disputes involving a breach of environmental law or other statutes. Rather these matters should be referred to the most appropriate agency or organisation.

Note: This chapter draws on material available from the Conflict Resolution website. See Further information section at the end of this chapter for contact details and resources.

Communication

Just as in everyday life, communication between people involved in rural industries and neighbours in rural areas is necessary and beneficial. Effective communication is one of the key factors in reducing the risk of land use conflict and in managing land use conflict issues when they arise. Communication is critical if people wish to convey a concern with a neighbour. In rural and more isolated areas, unlike in urban areas, neighbours may have to communicate and negotiate to find agreed solutions to issues rather than fully rely on an official from government to help resolve a dispute.

Suggestions for effective communication to manage rural land use conflict issues include the following.

- Think first then act. Issues between neighbours will inevitably arise so consider how you will respond.
- Pre-empt or discuss rural land issues of interest to you with your neighbours, particularly new neighbours.

- Boundary fencing, stray stock, weeds, chemical use, burning off, interfering with views/amenity, and domestic animals are common rural issues between neighbours in rural areas. Consider how you would approach these issues with a neighbour.
- Get on the front foot and inform your neighbours about a new, unique or unusual practice or development you are planning that may cause local concerns or objections.
- If a neighbour raises issue with you over your property management, listen and be patient, and ask them what their primary concern is and what suggestions they may have to rectify the situation. You don't have to agree to their request, but at least indicate you will take on board their concerns.
- Consider issues raised by neighbours as their concerns may be valid. It is better to deal with small issues as they arise than to let something escalate.

How and when should I raise an issue with my neighbour?

There are many ways and situations where you could communicate with a neighbour or someone you have issues with. Determine which approach may work best by considering how you would like to be approached and how the other person is likely to react. What about:

- Next time you see them working on their property or near the boundary?
- In the village or next time you bump in to them in town?
- Inviting them over for 'a cuppa' and informal chat (time and place is important here)?
- Inviting them over for a barbeque and make mention of the issues of concern?
- Catching up in town for a coffee or a meal?
- Making an informal comment at sport when you have the opportunity to be alone with your neighbour?
- A personal letter? *
- Through a third person such as a trusted neighbour or friend?

* Use formal written communication with a neighbour cautiously if you want to maintain an open relationship, and only if it is necessary or a last resort. Personal communication is generally more effective and helps to establish the basis of a relationship from which negotiations can take place.

Many issues can be resolved by both parties discussing and exploring different options that could satisfy their needs. A neighbour or mutually respected acquaintance of both parties might be able to help out here. The neighbour may also have addressed the problem before and be able to provide some useful advice and suggestions. A third party helping in a situation cannot afford to be perceived as biased or one sided or the negotiation may not work.



Checklist for addressing a conflict situation

Look at the checklist that follows and use it as a guide to deal with conflict over land use. Considering these points and questions early could prevent a potential or perceived issue from getting out of hand or engendering ill will with a neighbour.

Activities on my property	Activities on my neighbour's property
• Is there validity in the issues raised by my neighbour? • Do I need any approvals for the land use or activity? • Should I seek independent advice? • What key organisations should I talk to and what do I need to ask them? • Do I need to keep a record of my discussions with key organisations? • Can an industry body help explain the requirements that apply? • Do I have the necessary approvals and what conditions do they specify? • Is there a best practice guide or code of practice relevant to my land use or enterprise? • Have I read and understood the guides and codes relevant to my land use or enterprise? • Is my proposal or land use likely to have an impact on my neighbours or adjoining land uses? • Should I inform my neighbours about my enterprise or land use before undertaking an activity? • Would my neighbours appreciate knowing what my farm plans are? • Do I have a farm plan and have I included the location of roads, waterways, native vegetation, wetlands, local school and neighbours' properties in my plan? • How will I take these sensitive areas into account in my farm plan?	• Is this really an issue for me? • Is it necessary for me to take some action? • Is the issue ongoing or is it a one-off event? • Can I ignore the issue? • Does the issue have a serious impact on me or my family or friends? • Does the issue have a serious impact on the community or the environment? • If I take action, what do I want to see happen? • Why do I want to see this result? • Will my neighbour and others want the same or a different result or outcome? • How will I go about tackling this issue, who should I talk to and how would I go about it? • Can I leave taking action and see what eventuates?



Resolving rural conflict

With a realistic set of expectations, a little goodwill and some creative solutions there are few disagreements that can't be mutually resolved. While some disagreements may eventually end up in mediation or litigation, mutual resolution is a better alternative as it enables the parties directly involved to try to find an agreeable situation. Breaches of the law that cannot be resolved through informal dispute resolution and negotiation between neighbours should be referred to the relevant authority (see Chapter 4).

The following are some steps that may help you resolve rural conflict and disputes.

Mutual resolution

Many issues can be resolved by those directly involved discussing and exploring different options that could satisfy the needs of both parties. This assumes the parties are talking and can act in a reasonable manner.

Informal third party help

Agencies and organisations, particularly the Attorney General's Community Justice Centres (CJsCs) and others such as NSW Department of Primary Industries, Department of Environment and Climate Change, local councils and the Environment Defenders Office may be able to provide advice or guidelines to help resolve some disputes.

The CJC provides free mediation and can be contacted on 1800 990 777. For more information go to www.cjc.nsw.gov.au.

Formal third party mediation

If you can't reach agreement after discussion or involving another party, then a trained third party mediator may be able to help.

Call the Dispute Resolution Legal Officer of the NSW Law Society (02) 9926 0214 for a referral to a dispute resolution practitioner in your area. Otherwise go to the society's website www.lawsociety.com.au.

Legal proceedings

There may be cases where a formal legal action is considered the most appropriate form of action or the only course of action. If you go down this path be prepared for long time frames and financial costs in reaching an outcome. Contact a solicitor for expert advice and assistance.



Getting negotiation to work

The following is a list of potential strategies sourced from the Conflict Resolution Network, *Free Conflict Resolution Kit* (see *Further Information* for more details) which may help you in resolving or coming to terms with a conflict situation. It is an excellent reference for mediation techniques. They have been modified to address the theme of this booklet, i.e. rural land use conflict.

The suggestions are relatively broad and are general tools for resolving disputes so can be applied to conflicts other than those over rural land use. Select those strategies or approaches which you personally feel most comfortable with. The strategies can apply to both parties in a dispute. The aim is to work towards or hopefully achieve an agreeable or win/win situation.

The win/win approach

Issues that have the potential to cause conflict will inevitably arise. It's important to take a win/win approach when dealing with them.

A situation arises and an issue is brought to your attention. Expect issues to arise; they are a part of life. The aim is to work towards and achieve a win/win situation. This looks at the underlying needs of each individual recognising that both parties have their own requirements, desires and aspirations.

Openness to adapting one's position in the light of shared information and attitudes; attacking the problem, not the person; and taking a needs-based approach will all go along way in opening the door to resolving a conflict.

To start the process, briefly define the issue, the problem area or conflict in neutral terms that all can agree on and that don't invite a yes/no answer.

The steps to achieving a win/win situation are as follows:

- Try to have **empathy** for the person who feels affected by something you have done or not done; don't dismiss their concerns.
- Try to **listen** carefully to the concerns expressed. If they have caught you at a bad time, say so and ask if you can discuss the matter at another time.
- After the person has outlined their concerns, aim to **reflect and clarify** the issue(s) with them; don't assume you understand their concerns without checking first.
- **Explore possibilities** and look for alternatives and options that meet the needs of both parties.

Empathy

This is about rapport and openness between people. When it is absent, people are less likely to consider your needs and feelings. The best way to build empathy is to help the other person feel that they are understood. That means being an active listener, clarifying the issue from their perspective and restating it so that everyone is clear on the issue and related concerns.

Appropriate assertiveness

The essence of appropriate assertiveness is being able to state your case without arousing the defences of the other person. The secret of success lies in saying how it is for you rather than what they should or shouldn't do. The phrase, 'the way I see it ...' attached to your assertive statement, helps. A skilled 'I' statement goes even further. When you want to state your point of view helpfully, the 'I' statement formula can be useful. An 'I' statement says how it is on my side, how I see it. Avoid using all-encompassing statements like 'Everyone thinks ...' or 'They all say ...'.

Respect and value differences

Just as we are unique and special, so are other people. We all have viewpoints that may be equally valid. Each person's viewpoint makes a contribution to the whole and requires consideration and respect to form a complete solution. This wider view can open our eyes to many more possibilities. It may require us to change our self talk that says, 'For me to be right, others must be wrong.'

Responding to resistance from others

When faced with a statement that has potential to create conflict, ask open questions to reframe resistance. Explore the difficulties and then re-direct discussion to focus on positive possibilities. Go back to the legitimate need and concerns of each individual and set the scene for a co-operative agreement.

Dealing with people

People's behaviour occurs for a purpose. When people perceive a threat to their self esteem, a downward spiral can begin. People can be led into obstructive behaviour in the false belief that this will gain them a place of belonging and significance. How we respond to their difficult behaviour can determine how entrenched these become. Recognise the real needs of the person in the particular conflict situation, clarify these needs with them, and then move onto a cooperative solution.



What about negotiation skills?

Here is a brief summary on negotiation sourced from the Conflict Resolution Network website. Use it as an initial reference point when negotiation is necessary but seek independent professional advice as may be required, depending on the circumstances.

Five basic principles of negotiation:

1. *Be hard on the problem and soft on the person.*
2. *Focus on needs, not positions.*
3. *Emphasise common ground.*
4. *Be inventive about options.*
5. *Make clear agreements.*

Where possible prepare in advance. Consider what your needs are and what the other person's are. Consider outcomes that would address more of what you both want. Commit yourself to a win/win approach, even if tactics used by the other person seem unfair. Be clear that your task will be to steer the negotiation in a positive direction. To do so you may need to do some of the following:

Reframe

Ask a question to reframe, such as 'If we succeed in resolving this problem, what differences would you notice?'. Check understanding, e.g. 'Please tell me what you heard me/them say'. Request something she/he said to be re-stated more positively, or as an 'I' statement. Re-interpret an attack on the person as an attack on the issue.

Respond not react

- Manage your emotions.
- Let some accusations, attacks, threats or ultimatums pass.
- Make it possible for the other party to back down without feeling humiliated, e.g. by identifying changed circumstances which could justify a changed position on the issue.

Re-focus on the issue

Maintain the relationship and try to resolve the issue, e.g. 'What's fair for both of us?'. Summarise how far you've got. Review common ground and agreement so far. Focus on being partners solving the problem, not opponents. Divide the issue into parts. Address a less difficult aspect when stuck. Invite trading ('If you will, then I will'). Explore best and worst alternatives to negotiating an acceptable agreement between you.

Identify unfair tactics

Name the behaviour as a tactic. Address the motive for using the tactic.

Conclusion – the resolution

Ask yourself these questions to identify how the issue will be resolved:

- Is it built on a win/win approach?
- Does it meet many of the needs of all parties?
- Is it feasible?
- Is it fair?
- Does it solve the problem?
- Can we settle on one option or do we need to trial several?

Lodging formal complaints of an alleged breach

If informal negotiations with a neighbour have not been effective or the matter is a legal issue, you can lodge a formal complaint with the relevant regulatory authority or seek a legal remedy if one is available.

There are many government and non-government organisations with some interest and responsibility in rural conflict issues. You may have to make a number of enquires, either in person or by phone, before you find the most appropriate one. Be prepared and try and be patient as agencies may have other concerns they are dealing with, and the issues you raise may be the responsibilities of a number of organisations.

If you decide to lodge a formal complaint with an organisation, direct it to the most appropriate authority. Organisations cannot take action unless the issue falls directly within their area of responsibility. A formal letter dated, signed and describing the issue in some detail is the preferred way to lodge a formal complaint. Remember to include your contact details and when you would expect a reply. An email is the next preferred format for lodging a formal complaint followed lastly by a phone call or personal approach. The last two options will probably be the most ineffective unless you want to check a point or clarify the right channels to pursue your written complaint. Having a formal record of the complaint you have lodged is always desirable for follow up.

You may have notified the appropriate government department but no action appears to have been taken. Remember that action may have taken place and, because of confidentiality or impending legal proceedings, you may not have been contacted even though you were the one to lodge the complaint. You will need to allow time for the authority to investigate your allegation. You might find that the outcome does not meet your expectations, e.g. that there was not a breach and that the accused person or company was acting within the law.



Lodging a formal complaint of an alleged breach – summary

1. Approach the authority by phone or go to their office.
2. Check that it is the correct authority to handle your complaint, if not, get advice on who is?
3. Clarify what is the correct procedure under which a complaint can be lodged.
4. What is the timeframe under which actions or a possible resolution may occur?
5. What are the correct details for the authority such as address, who to write to, position/ status of the person etc for a written complaint?
6. What will I need to support my formal written complaint (photographs, video, witnesses, other evidence)?
7. Make a copy of all correspondence, file for reference.

Several courses are open to you to obtain feedback. If you have lodged a complaint with an officer either by phone or called in to their office, get their details and direct contact information. You then may wish to follow up your complaint directly with them. If this is not successful you can write a formal letter to the Director General of the relevant government department. If you have either no response or an unsatisfactory response you could arrange a meeting or write a letter to your local member of State Parliament as a next step. If you still feel dissatisfied with manner in which your issue has been dealt, you could contact the NSW Ombudsman's Office.

Finally, some land use conflict and neighbour disputes can be extremely stressful, tiring and frustrating. **Never** take action into your own hands other than communication aimed at finding a resolution. If you find yourself getting worked up and very upset and frustrated, seek professional support and remove yourself from the situation until such times that you are in a position to address the issue calmly and safely.

Note: It's a good idea to keep a detailed log of actions, dates, phone calls, photos, and correspondence to qualify your complaint whatever course of action you decide upon.



Further information

Publications

- *Dealing with neighbourhood noise and other issues*
www.environment.nsw.gov.au/neighbourhoodnoise.htm
- Fast Answers – Problems with Neighbours Law Society of NSW www.lawsociety.com.au
- Law for you – Fact Sheet – Neighbourhood disputes www.law4u.com.au
- *The Environmental Law Handbook* 4th Edition Farrier, D. & Stein, P. Redfern Legal Centre Publishing, 2006

Note: Local and regional libraries may provide another useful source for obtaining information on this topic including local contacts and specific information relevant to the area.

Contacts

- Attorney General's Department www.lawlink.nsw.gov.au/lawlink/corporate/ll_corporate.nsf/pages/attorney_generals_department_index
- Community Justice Centres www.cjc.nsw.gov.au
- Dispute Resolution Legal Officer of the NSW Law Society www.lawsociety.com.au
- Environmental Defenders Office (NSW) Northern Rivers
www.edo.org.au/edonsw/site/northern_rivers_edo.php
- Law Society www.lawsociety.com.au
- Local councils www.dlg.nsw.gov.au
- Local Land Boards (NSW) www.lands.nsw.gov.au
- The Conflict Resolution Network (PO Box 1016 Chatswood 2057 NSW Australia)
www.crnhq.org/ or crn@crnhq.org





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