

REGIONAL COUNCIL

ORDINARY MEETING OF COUNCIL

SUPPLEMENTARY AGENDA

8 FEBRUARY 2017



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COUNCIL SUPPLEMENTARY
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11. ORGANISATIONAL DEVELOPMENT AND PLANNING REPORTS

11.7 Poultry Farming Directions Paper

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Summary:

The Department of Infrastructure, Local Government and Planning (DILGP) has released a Directions Paper on the proposed approach regarding roles and responsibilities for the assessment of development applications for poultry farms. The implications of the proposed approach are assessed and a recommendation is made on the content of Council's submission.

Officer's Recommendation:

THAT a submission on the Poultry Farming Directions Paper is prepared and that it includes the following:

- (a) The proposed approach is not supported and Council's preference is that assessment and determination against a state-wide code prepared by the State Government is undertaken by State Assessment & Referral Agency (SARA) or Department of Agriculture and Fisheries (DAF) as a concurrence agency.**
- (b) The use of the zoning of land under Council's planning schemes is not suitable for determining where less stringent amenity impact criteria should apply and until such time as the zoning under new planning schemes reflect this purpose, the state-wide code should provide for land in the Rural zone, which is used for a rural residential purpose, to be treated as if it were in a Rural Residential zone.**
- (c) The State Government should guarantee that all costs incurred by Councils in defending decisions that are consistent with the state-wide code in the Planning and Environment Court will be met by the State Government.**

Report

1. Introduction

The State Government has released a Poultry Farming Directions Paper and requested that comments be provided by 14 February 2017. An assessment of the implications of the proposed changes is provided together with recommendation on matters to be raised in a submission.

2. Background

The State Government has released a Poultry Farming Directions Paper and requested that comments be provided by 14 February 2017. The paper has been prepared to address concerns raised by both local government and the poultry industry regarding responsibilities for aspects of development assessment.

3 Report

3.1 The proposed approach and the state-wide code

The Poultry Farming Directions Paper outlines the proposed approach of the State Government to the regulatory framework for the assessment and determination of development applications for poultry farms. The proposed approach is as follows:

- The State Government will relinquish its current State Assessment and Referral Agency (SARA) role as a concurrence agency for proposals involving >200,000 birds.
- Large scale poultry farms (>200,000 birds) are to remain as a prescribed Environmentally Relevant Activity (ERA), but this will not be a concurrence ERA and so assessment of the ERA will be the responsibility of Council.
- The requirement to obtain an Environmental Authority (EA) is to remain and will be administered by the Department of Agriculture and Fisheries (DAF) with EA assessments to be carried out concurrently with development applications or after decisions on development applications have been made by Council.
- Council will be solely responsible for assessing development applications for poultry farms, including those involving >200,000 birds.
- The State Government will develop and implement a state-wide code (similar to existing IDAS codes) that Council will have to use when it assesses and decides applications for large scale poultry farms (>200,000 birds only). This state-wide code would only be triggered by poultry farm proposals involving >200,000 birds. Revised guidelines will be released by the State Government to support the state-wide code.
- Council's planning schemes will continue to regulate poultry farms involving <200,000 birds.
- In the event of inconsistencies arising between Council's planning schemes and the state-wide code, the state-wide code prevails.

While the state-wide code has not yet been drafted, the Poultry Farming Directions Paper indicates that the code will "... *prescribe assessment benchmarks that local governments must use in assessing relevant development applications*" (my emphasis).

It is indicated that a presumption in favour of a location in a Rural zone will exist over land included in other zones however to the extent that "sensitive receptors" exist on land in a Rural zone the poultry farm will not be able to cause significant amenity impacts to these receptors, which include dwellings on rural properties.

More stringent criteria that ensure lesser amenity impacts arise on land included in other than the Rural zone, such as the Rural Residential zone are proposed.

3.2 Implications for Council

A number of implications for Council have been identified and these are detailed below:

1. Responsibility without authority – Council will find itself in the position of having sole responsibility for assessing and deciding applications for poultry farms but will be unable to respond to local community concerns, with which it may well agree, as it will not have the authority to make decisions that are inconsistent with the state-wide code. Taking a different perspective, Council will be able to inform concerned members of the community that despite their concerns, which it may agree with it, has no discretion and must apply the state-wide code.
2. No departure from the state-wide code criteria will be permitted – Council will not be able to use its planning scheme to set more stringent odour, dust and noise criteria for parts or all of the Lockyer Valley as if there is an inconsistency between the planning scheme and the state-wide code the latter will prevail.
3. Zoning of land is an imperfect determinant of sensitivity to impacts – Land has been included by Council in zones such as the Rural Residential zone on the basis of providing use rights, not with the intention of providing protection from the amenity impacts of poultry farms. There are areas across the Lockyer Valley that are rural residential and considered as such by the residents and so are areas where residents have an expectation of rural residential amenity, but which are included in a Rural zone. Residents of these areas will be expected to accept a lower level of amenity as presumably only significant amenity impacts will not meet the requirements of the state-wide code.
4. Lack of technical expertise/technical resources – It will be necessary to outsource the assessment of technical aspects of applications against the state-wide code, specifically in the fields of odour, dust and noise modelling. Council will need to ensure the application fees set for new poultry farms and the expansion of existing poultry farms provide for full recovery of costs incurred in undertaking technical assessments.
5. Cost of Planning and Environment Court Appeals – Council could find itself having to fund the cost of defending appeals brought in the Planning and Environment Court by submitters who do not agree with an approval being given by Council despite the proposal meeting the requirements of the state-wide code. Council could also find itself bearing the costs of defending appeals brought by submitters or applicants over the interpretation of the state-wide code. Under the current arrangements, the concurrence agency is required to defend its decision in the Court and bear all the costs incurred in doing so.

3.2 Recommended action

It is considered that Council should make a formal submission and that the submission should indicate:

1. The proposed approach is not supported and Council's preference is that assessment and determination against a state-wide code prepared by the State Government is undertaken by SARA or DAF as a concurrence agency.
2. The use of the zoning of land under Council's planning schemes is not suitable for determining where less stringent amenity impact criteria should apply and until such time

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as the zoning under new planning schemes reflect this purpose, the state-wide code should provide for land in the Rural zone, which is used for a rural residential purpose, to be treated as if it were in a Rural Residential zone.

3. The State Government should guarantee that all costs incurred by Councils in defending decisions that are consistent with the state-wide code in the Planning and Environment Court will be met by the State Government.

4. Policy and Legal Implications

The proposal to require Council to undertake assessment against a state-wide code and the inability to impose stricter requirements on poultry farms through its planning scheme means Council will not be able to implement policy that is more stringent than the state-wide code and that is informed by consultation with its residents.

The proposed changes will, without an assurance from the State Government to cover costs incurred in defending decisions made consistent with the state-wide code in the Court, result in Council having to meet those costs.

5. Financial and Resource Implications

The requirement to undertake assessment against a state-wide code and to defend decisions in the Planning and Environment Court will have financial and resource implications for Council.

6. Delegations/Authorisations

There are no implications for delegations or authorisations arising from this report.

7. Communication and Engagement

There are no implications for communications or engagement arising from this report.

8. Conclusion

The proposed changes detailed in the Directions Paper will reduce Council's ability to make decisions that respond to community concerns, expose Council to costs of defending decisions based on a document it has not prepared and leave residents of rural residential areas that are not included in a Rural Residential zone vulnerable to decreased amenity outcomes.

9. Action/s

That Council resolves in accordance with the Officers Recommendation.

Attachments

1 [View](#) Direction Paper 3 Pages

Poultry farming directions paper

DIRECTIONS
PAPER

Background and context

In October 2016, the Department of Infrastructure, Local Government & Planning (DILGP) distributed a poultry farming options paper to several South East Queensland (SEQ) local governments and the SEQ Council of Mayors (COMSEQ). The options paper was prepared in response to concerns raised by several local governments in relation to the regulatory framework for industrialised poultry farms. The options paper was based on a desktop review of the existing policy environment and development assessment system. It highlights known issues such as inconsistent local odour assessment criteria, overlapping jurisdiction, duplication between state and local government assessments and a concerning trend of increasing litigation in the Planning and Environment Court around poultry farm assessment decisions.

In November 2016, representatives from a number of SEQ local governments, COMSEQ, the Department of Environment and Heritage Protection (DEHP) and the Department of Agriculture and Fisheries (DAF) were invited to participate in a workshop to further explore the issues identified in the options paper. At the workshop, DILGP provided a commitment to formulate a proposal for changes to the current regulatory framework with a view to clarifying assessment roles and responsibilities, and improved efficiency.

In December 2016, DILGP also met with DAF and various industry representatives to discuss the identified issues with the existing regulatory framework and potential changes. At this meeting, DILGP resolved to provide industry with an opportunity to provide feedback on any reform proposals prior to progressing changes.

This directions paper outlines the state's proposed response and is provided for feedback and discussion purposes.

Proposed regulatory framework

After exploring the identified issues with the above stakeholders, and with a view to improving the current regulatory framework, the state proposes the following changes:

Proposed roles and responsibilities

- The state to relinquish its current State Assessment and Referral Agency (SARA) role as a concurrence agency for proposals involving >200K birds
- Large scale poultry farms (>200K birds) to remain as a prescribed Environmentally Relevant Activity (ERA), but not a concurrence ERA. Requirement to obtain an Environmental Authority (EA) to remain and be administered by DAF
- EA assessments to be carried out concurrently with development applications or after decisions on development applications
- Local governments to be solely responsible for assessing development applications for poultry farms, including those involving >200K birds

- The state to develop and implement a state-wide code (similar to existing IDAS codes) for local governments to use in the assessment of large scale poultry farms (>200K birds only). Local government planning schemes continue to regulate poultry farms involving <200K birds
- The state-wide code to have effect throughout Queensland and to be administered by local governments. The state-wide code would only be triggered by poultry farm proposals involving >200K birds
- In the event of inconsistencies between local government planning schemes and the state-wide code, the state-wide code prevails
- The state-wide code to be supported by revised state guidelines.

Proposed state-wide code

In order to establish consistent assessment criteria, to be applied throughout the state, DILGP proposes to develop a state-wide code that will be given effect through the forthcoming *Planning Regulation 2017*. The state-wide code would prescribe assessment benchmarks that local governments must use in assessing relevant development applications. Failure to comply with the state-wide code would provide grounds for refusal.

In developing such a code, the state, through DILGP, will consult with stakeholders on appropriate amenity standards and approaches to the management of impacts including odour, dust and noise. The state considers poultry farms to be a land use consistent with the intent of rural zones; however their development should preserve the capacity of adjacent land to be used for purposes intended by the relevant zone(s). Accordingly, the state considers it appropriate for:

1. amenity impacts within a rural zone to dissipate without significantly affecting *sensitive receptors*;

Sensitive Receptor means:

(a) a dwelling, mobile home or caravan park, residential marina or other residential premises; or

(b) a motel, hotel or hostel; or

(c) a kindergarten, school, university or other educational institution; or

(d) a medical centre or hospital; or

(e) a protected area; or

(f) a public park or gardens; or

(g) a commercial place or part of the place potentially affected.

It includes the curtilage of such any place and any place known or likely to become a sensitive place in the future.

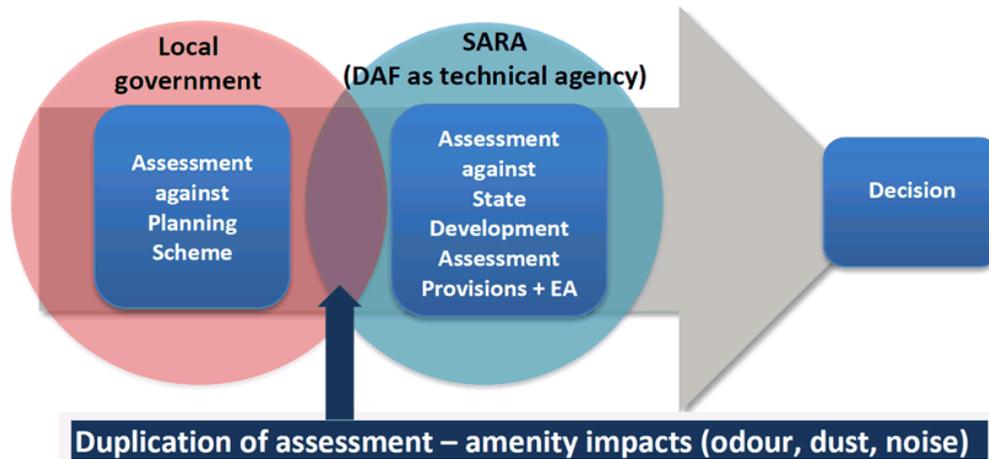
2. more stringent criteria to apply where impacts may extend beyond the boundary of a rural zone.

In addition to developing a code, DILGP will also prepare guidance material to assist with interpretation, decision making and appropriate conditioning. In doing so, it is anticipated that assessments will be more consistent and conditions attached to development approvals will be fit-for-purpose, eliminating crossover with operational matters addressed through EAs.

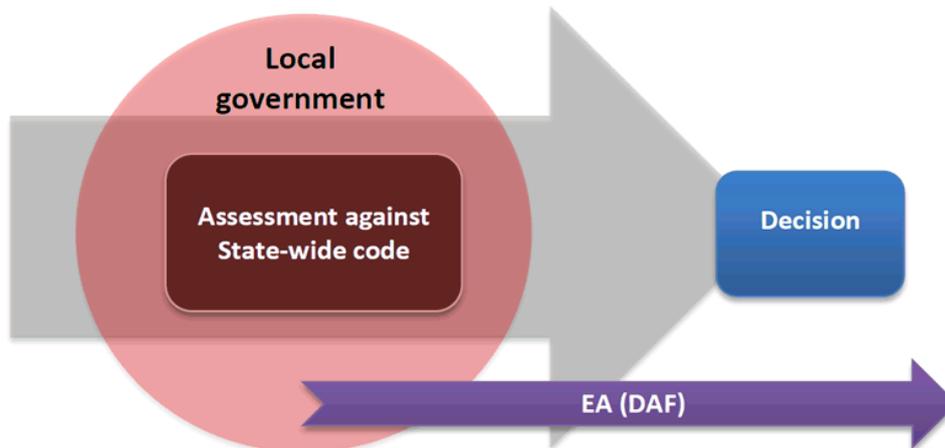
Basic diagrams illustrating the existing and proposed regulatory frameworks, for poultry farms involving >200K birds, are shown on the following page.

Department of Infrastructure, Local Government and Planning

Existing Regulatory Framework: Poultry farm >200K birds (MCU/ERA) with Local Government as Assessment Manager and referral to SARA as Concurrence Agency



Proposed Regulatory Framework: Poultry farm >200K birds (MCU) with Local Government as Assessment Manager and no referral to SARA



Next steps

Prior to commencing drafting, DILGP seeks comments and feedback on the state’s proposed changes to the existing regulatory framework. Accordingly, please consider the approach detailed within this paper and provide your responses electronically to the following email address prior to 14 February 2017:

SARApplanningssupport@dilgp.qld.gov.au