

Summary Assessment of Provincial Legislative Framework NEW BRUNSWICK

Overall, the strength of New Brunswick’s legislative framework for protecting farmland is **weak**. The strongest aspect of the framework is its ability to integrate priorities across jurisdictions, primarily through the use of Regional Service Commissions, which increase the capacity for regional planning, while at the same time help to minimise uncertainty through better planning efforts. A profile of the provincial legislative framework is provided at the end.

The legislative framework for local governance and land use planning is presently under review¹. As well, the Department of Agriculture, Aquaculture and Fisheries (DAAF) is holding public consultation sessions to seek and engage the public on the development of an Agricultural Land Policy.² See note below.

Strength of Provincial Legislative Framework: Summary Assessment

	Maximise stability	Integrate across jurisdictions	Minimise uncertainty	Accommodate flexibility
New Brunswick	*	**	*	**

* = Very weak; ***** = Very strong

Maximise stability

New Brunswick does not have any province-wide land use policy or statement of provincial interest in protecting farmland. Although some legislation supports protecting farmland, it does not appear to be effective. Any policies and regulations that protect farmland are at the discretion of local planning authorities. Yet only 40% of the land mass is covered by local plans.

The *Community Planning Act* (CPA) sets the requirements for planning efforts and statutory plans of local governments and planning authorities, for which a Regional Plan (s.17), Municipal Plan (s.23), Rural Plan (s.27.(2)), Basic Planning Statements (s.29; in existence, but no longer used), and Zoning Bylaws (s.34) are the primary tools.

In addition to the 107 municipalities, there are 267 local service districts (LSD) that are administered under the Department of Environment and Local Government (DELG). Twelve Regional Service Commissions (RSCs)³ that are service delivery agents, not a governance mechanism. RSCs are established in legislation that sets out the mandate, structure, and key operating guidelines for each Commission. Among other duties, RSCs provide planning services to LSDs and municipalities.

¹ Action Plan for a New Local Governance System,

http://www2.gnb.ca/content/gnb/en/departments/elg/local_government/content/promos/action_plan_local_governance.html

² Agricultural Land Policy Consultation, <http://www2.gnb.ca/content/gnb/en/departments/10/agriculture/content/agricultural-land-policy-consultation.html#>

³ Structure of the new Regional Service Commissions,

http://www2.gnb.ca/content/gnb/en/departments/elg/local_government/content/promos/action_plan_local_governance/structure.html

The *Agricultural Land Protection and Development Act* (ALPDA) (1997) contributes to the stability of the legislative framework. The ALPDA establishes agricultural land owner associations. However, the full effect of the ALPDA was not realised when three critical sections (10, 21, and 22) were omitted from proclamation, thereby weakening the Act. Section 10 enabled agricultural lands to be “registered” and have corresponding regulations established through statutory plans. Sections 21 and 22 deal with the consequential amendments to the CPA that would have provided the enabling legislation to bring the benefits of having registered agricultural lands into full force. These omissions removed important planning tools that would have helped to protect agricultural lands and control setbacks from residences and other non-farm developments.

Integrate public priorities across jurisdictions

Section 4.1(1) of the CPA enables the Province to establish a provincial land use policy to guide local planning and development, which would include principles, goals and priorities, and policy statements of provincial interest. This provincial land use policy would then be integrated into local planning through s.4.1(3), which requires that a regional plan, municipal plan, rural plan, basic planning statement, or a bylaw or regulation “shall conform with the provincial planning policy.” In the case of a conflict, the provincial planning policy prevails.

The CPA (s2(d)) requires integration between regional and lower-level plans, whereby municipal plans and basic planning statements by municipalities must be adopted “within the context of a regional plan.”

Minimise uncertainty

The absence of any provincial land use policy or statement of provincial interest that protects farmland contributes to uncertainty within the framework. This uncertainty about the importance of agricultural land was increased when “registered agricultural land” was not included in the LAPDA.

The use of RSCs to support lower-level planning efforts also helps to minimise uncertainty by increasing the capacity for land use planning through expertise and a higher level of co-ordination among local planning authorities.

Accommodate flexibility

The structure of the RSCs increases the ability to accommodate flexibility within the framework. First, the direction is set and decisions are made by a Board that has community representation, which is accountable to their member municipal and rural councils. The mandate for each RSC is established separately, thereby providing an opportunity to establish its structure and operating guidelines in accordance with regional needs.

A local planning advisory committee is another governance mechanism enabled through the CPA (s.12-15). These committees advise and make recommendations to council and give views to proposed bylaws. This governance mechanism may help to accommodate flexibility.

In spite of its lack of direction for protecting farmland, the legislative framework accommodates flexibility through its decentralised approach, in that any local planning authority can integrate farmland protection policies into its statutory plans and regulations. The South Central Carleton County Rural Plan⁴ provides an example, whereby its plan includes a policy (Part B(f)) for Agricultural Uses. The policy includes the following statements:

- It is a policy to promote the protection of prime agricultural lands in the interest of safeguarding local food production for future generations.

⁴ <http://rsc12.ca/scccplan.pdf>

- It is a policy to accommodate value added and supplemental activities that can increase farm income by permitting a mix of compatible uses on land where agriculture is a primary permitted use.
- It is a policy to minimize land use conflicts that could arise from non-farm development near existing agricultural land uses, and conversely, from the development of agricultural facilities near existing non-farm uses.

Note: current development of Agricultural Land Policy

As noted above, the Province is reviewing several areas of legislation. The legislative framework for local governance and land use planning is presently under review. The local governance and land use planning committee will review new planning tools and the need for province-wide planning, including statements of provincial interest.⁵ As well, the Department of Agriculture, Aquaculture and Fisheries (DAAF) is holding public consultation sessions to seek and engage the public on the development of an Agricultural Land Policy. The Discussion Paper⁶ states,

- To be viable, farmers need access to good farmland in large enough blocks to farm efficiently. They also need assurance that their investment will not be eroded from non-agricultural development that impedes their ability to farm.
- Farmland is a non-renewable resource and is the backbone for all agricultural activities. It takes many years of careful husbandry to bring land to a productive state. Clearing new land is expensive and rejuvenating lands that have been used for non-agricultural activities is either impossible or very costly and time consuming to bring back to production.
- Currently, New Brunswick does not have any effective legislation or policies that protect or preserve agricultural land.

Thereby, the purpose of the public consultations for the development of an Agricultural Land Policy is to address, among other things, the following issues

- Identifying the importance of agriculture to New Brunswick and especially to rural areas.
- Reducing or eliminating encroachment on agricultural operations. Without guidelines or regulations, non-farming activities are often set up adjacent to farming operations resulting in complaints about noise and odors.
- While new livestock agricultural operations have set back distances they must adhere to when developing farms, non-agricultural development does not have similar setback distances when building adjacent to a livestock operation. Reciprocity of guidelines/requirements should be considered.
- Establishing a list of activities that are compatible with agriculture.
- Encouraging development of non-compatible activities to areas least suitable for agriculture.
- Preserving topsoil.

The outcomes of both reviews will likely affect the strength of the legislative framework for agriculture.

⁵ McClellan, M., D. Smart, and D. Savard. 2014. Provincial Framework & Principles: Creating sustainable communities in NB. Presentation to CIP Conference.

<http://www.peoplematter2014.ca/wp-content/uploads/2014/07/PAN01-New-Brunswick-Presentation-En.pdf>

⁶ Agricultural Land Policy Consultation: Discussion Paper. On-line:

<http://www2.gnb.ca/content/dam/gnb/Departments/10/pdf/Agriculture/Consultation/AgriculturalLandPolicyConsultationDiscussionPaper.pdf>

Legislative Framework for New Brunswick

	POLICY	LEGISLATION	GOVERNANCE
PROVINCIAL	Agriculture Strategy	<i>Community Planning Act</i> <i>Agricultural Land Protection and Development Act</i> <i>Agricultural Operation Practices Act</i>	Assessment and Planning Appeal Board
REQUIRED INTEGRATION	CPA 4.1(3) A regional plan, municipal plan, rural plan, basic planning statement or a by-law or regulation under this Act that is enacted or adopted after the coming into force of the provincial planning policy shall conform with the provincial planning policy, and in the case of a conflict, the provincial planning policy prevails.		
REGIONAL		<i>Regional Plan</i>	
LOCAL		<i>Municipal Plan</i> <i>Rural Plan</i> Zoning Bylaw	Planning Advisory Committee Local Service District Advisory Committee Agricultural Land Owners Association

Acts (provincial laws), bylaws (local government laws, e.g., official municipal plan) [italicised]

Enforceable policy, regulations pursuant to acts [bold]

Aspirational policy at all levels [plain text]