

DEPARTMENT *of* JUSTICE

BACKGROUND PAPER

**REVISED DRAFT STATE POLICY ON THE
PROTECTION OF AGRICULTURAL LAND 2007**

JULY 2008

Land Use Planning Branch

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1. BACKGROUND

1.1 Introduction

Tasmanian Sustainable Development Policies ('State Policies') are a core element of the State's Resource Management and Planning System and are provided through the *State Policies and Projects Act 1993*.

The *State Policy on the Protection of Agricultural Land 2000* came into effect on 6 October 2000. The purpose of the Policy is to foster sustainable agriculture in Tasmania by ensuring the continued productive capacity of the State's agricultural land resource.

The Policy requires that both prime and non-prime agricultural land is protected from conversion to non-agricultural use. This is to be achieved by implementing the Policy through local government planning schemes and other instruments that manage and control the use and development of agricultural land.

The State Government initiated the first periodic review of the Policy in August 2006. The aim of the review was to ensure that the Policy does not unreasonably restrict development on agricultural land, but efficiently and fairly protects the State's agricultural resource for the benefit of the Tasmanian community into the future.

The review Terms of Reference were to consider the following:

- The effectiveness of the Policy in protecting both prime and non-prime agricultural land from conversion to non-agricultural use;
- The effect of the Policy on the building of houses on small rural lots;
- The effect of the Policy on the subdivision of rural land;
- The effectiveness of the Policy in dealing with the issue of fettering (the restriction of agricultural uses through land use conflicts);

- The need for supporting guidelines or tools to assist the Policy's implementation; and
- Relevant matters arising from the Legislative Council Select Committee Inquiry into Planning Schemes.

A Steering Committee with State agency and Local Government Association of Tasmania (LGAT) representation was formed to oversee the review.

The review process involved substantial consultation with stakeholders, particularly local councils, and the general public

1.2 Review of State Policies

The *State Policies and Projects Act 1993* requires that all State Policies are periodically reviewed, to ensure they remain relevant and effective in their implementation. The responsible Minister for the purposes of the Act is the Premier.

The key steps in the review process are:

- The Minister considers what amendments might be needed to a State Policy. In the case of a major review such as the periodic review of the PAL Policy this will follow a significant public consultation process. In other cases a proposed amendment might only affect a Policy in a minor way.
- S.15A - the Minister gives a written direction to the Resource Planning and Development Commission (RPDC) to advise whether it considers that any proposed amendment constitutes a significant change to the State Policy.
- On receipt of the RPDC's advice, if the Minister decides that the referred amendment does not constitute a significant change, he or she may make the amendment by publishing details of it in the Gazette, and tabling

it in both Houses of Parliament, along with the Commission's advice.

- Where the Minister decides, on receipt of the RPDC's advice, that a referred amendment constitutes a significant change to the State Policy, he or she must direct the RPDC to prepare a report on the referred amendment.
- The RPDC must prepare the report, and in doing so, the provisions of sections 6,8,9,10,11 and 12 of the *State Policies and Projects Act 1993* apply as if the referred amendment was a draft State Policy.
- The first step in this reporting process, in accordance with sections 6 and 8, is to advertise and place the referred amendment on public display. The Act provides for a period of eight weeks for public representations to be made to the RPDC.
- The RPDC will then consider the representations made on the draft State Policy and may hold public hearings into the representations.
- RPDC must then prepare a report to the Minister on the draft State Policy (including any recommendations to modify), and publish notice of its report in the Gazette and make the report publicly available.
- Upon receipt of the RPDC's report on the draft State Policy, the Minister may recommend to the Governor the making of a new State Policy.
- The new State Policy must be approved by both Houses of Parliament and given public notification in the Gazette before it comes into effect.

2. AN OVERVIEW OF THE REVISED 2007 POLICY

2.1 Background

Assessment of the submissions and consideration of the issues raised during the review process indicated that the Policy did not require fundamental change but needed clarification and more consistent implementation through planning schemes.

Consequently, a broad approach to reviewing the Policy was established that emphasised the need for more consistent implementation of the Policy principles through planning schemes and sought to clarify the use of terms and concepts, simplify processes and only apply the Policy to land that can realistically be used for agriculture.

A draft policy 'package' was developed to address these issues and provide for a more effective and consistent implementation of the Policy across the State.

The policy package comprises three documents:

- A revised State Policy (the State Policy on the Protection of Agricultural Land 2007);
- An Implementation Guide to assist local councils to implement the 2007 Policy through planning schemes; and
- A set of Model Planning Scheme Provisions.

These documents are discussed in more detail in Sections 2.2 - 2.4 of this paper.

The Implementation Guide and Model Planning Scheme Provisions do not form part of the Policy itself and are not mandatory. It is intended that these documents are to serve as guidance tools for local councils and provide a 'best practice' methodology in implementing the 2007 Policy through planning schemes. The RPDC has agreed to examine and report on these documents as an adjunct to its formal reporting process on the 2007 Policy.

2.2 State Policy on the Protection of Agricultural Land 2007

The 2007 Policy builds upon the existing objectives, principles and definitions of the 2000 Policy. The amendments essentially fit into two categories:

- (a) Clarifying the intent of the 2000 Policy to provide for more consistent interpretation and implementation; and
- (b) The introduction of new themes and provisions to reinforce the effective implementation of the Policy.

These modifications are discussed in Sections 2.2.1 – 2.2.2.

2.2.1 Clarification of Terms and Concepts

A key aspect of the review process was to clarify terms and concepts used in the 2000 Policy in order to provide more certainty and consistency in the Policy's implementation.

2.2.1.1 Definitions

Agricultural Land

The 2007 Policy provides a revised definition of agricultural land to ensure that the Policy is not applied to land areas that have already been compromised for agricultural use.

Agricultural land is defined in the 2007 Policy as: *'all land that is in agricultural use or has the potential for agricultural use that has not been zoned or developed for another use or would not be unduly restricted for agricultural use by its size, shape and proximity to adjoining non-agricultural uses.'*

The qualification in the definition to exclude land that has not been zoned or developed for other uses is to ensure that the Policy does not unnecessarily restrict

development on rural land that may theoretically support agricultural use but where, in reality, such use would not be feasible or practical because of environmental factors, land size or adjacent land uses.

Fettering

A number of submissions referred to the issue of fettering and the absence of a definition for this in the 2000 Policy.

The 2007 Policy provides a definition for fettering as *'the prevention or restriction of agricultural uses or potential agricultural uses by the existence of a conflicting land use, usually residential, in the vicinity. "Fettering" may arise because agricultural practices causing noise, light, odour, dust, spray and other nuisances are incompatible with the amenity usually associated with residential land use. It may also arise from the potential impact of domestic animals and plants associated with residential use on adjacent agricultural uses.'*

The proposed definition is intended to minimise the potential for contention and assist in the interpretation of Principle 6 of the 2007 Policy.

Prime Agricultural Land

The 2007 Policy incorporates a reference to the revised edition (1999) of the Land Capability Handbook. The revised definition of 'prime agricultural land' now reads *'agricultural land classified as Class 1, 2 or 3 land based on the class definitions and methodology from the Land Capability Handbook, Second Edition, C J Grose, 1999, Department of Primary Industries, Water and Environment, Tasmania.'*

Utilities

Principle 4 of the 2000 Policy referred to 'public utilities'. However, the Policy did not provide a definition, which made it possible for 'public utilities' to be interpreted in a restrictive sense to refer only to utilities or infrastructure provided

by public institutions, typically State or local government. Consequently, the term 'utilities' replaces 'public utilities' in Principle 4 of the 2007 Policy to take account of the fact that an increasing number of private organisations now provide community infrastructure.

The accompanying definition also broadens the meaning of utilities to refer to any publicly accessible infrastructure regardless of whether it is provided by public or private institutions.

The 2007 Policy defines 'utilities' as *'the use of land for telecommunications; transmitting or distributing gas, oil, or power; transport networks; collecting, treating, transmitting, storing or distributing water; or collecting, treating, or disposing of storm or floodwater, sewage, or sullage. Examples are a gas, water or sewerage main; electrical substation; power line; pumping station; retarding basin; road; railway line; sewage treatment plant; water storage dam; storm or flood water drain and weir.'*

2.2.1.2 Principles

While their intent is largely unaltered in the 2007 Policy, the principles of the 2000 Policy have been rearranged and revised to better clarify their meaning.

The revised principles, which build on and enhance the intent of those in the 2000 Policy, are listed below with a brief outline of the basis for inclusion in the Policy.

Principle 1 recognises the value of all agricultural land irrespective of whether it is of prime or non-prime classification, and seeks to ensure that such land is not unreasonably fettered by non-agricultural use and development. This builds upon the concept previously covered in the 2000 Policy under Principles 5 and 6.

Principle 2 emphasises that prime agricultural land is a scarce and important State resource that is to be appropriately managed to ensure that it is not

unnecessarily compromised by non-agricultural use or agricultural use that is not dependent on the soil as the growth medium (excluding plantation forestry). This expands upon Principle 1 of the 2000 Policy.

Principle 3 recognises that some forms of use and development on prime agricultural land may be directly associated with, and a subservient part of, an agricultural use and therefore is consistent with the intent of the Policy. This revised Principle expands and clarifies Principle 3 of the 2000 Policy.

Principle 4 clarifies that planning schemes are the mechanism to determine whether utilities can be allowed on prime agricultural land. This is a revision of Principle 4 of the 2000 Policy, which previously required referral to the RPDC to approve the development of utilities on prime agricultural land. The revised Principle also removes the concept of 'public utilities', replacing it with the broader term 'utilities', as discussed previously under 2.2.1.1.

Principle 6 is a new principle aimed at clarifying that residential use is not inconsistent with the Policy where it is required as part of an agricultural use, or where it does not unreasonably convert agricultural land or fetter agricultural use. This is a revision to Principle 2 of the 2000 Policy, which has at times been misinterpreted to mean that all forms of residential use and development were incompatible with the Policy.

Principle 8 reinforces the intent of Principle 5 of the 2000 Policy that planning schemes are the mechanism to determine the appropriate level of protection for non-prime agricultural land, taking into account its local and regional significance for agriculture.

Principle 9 clarifies that 'specified irrigation schemes' referred to in Principle 7 of the 2000 Policy are 'Irrigation Districts' proclaimed under Part 9 of the *Water Management Act 1999*, and not any

public or private irrigation scheme that is in existence.

Principle 10 clarifies that planning schemes cannot prohibit or require a discretionary permit for agriculture that depends on the soil in areas zoned for rural purposes. This is consistent with the Objectives of the 2000 Policy. However, Principle 10 does not apply to the establishment of plantation forestry on prime agricultural land, which is the subject of a new principle (Principle 11) discussed in Section 2.2.2.

2.2.2 New Themes and Provisions

The following definitions and principles have been incorporated into the 2007 Policy to more effectively promote the overall purpose of the 2000 Policy.

Controlled Environment Agriculture

The 2007 Policy recognises the changing nature and range of agricultural practices emerging in the Tasmania. There was concern that the 2000 State Policy could restrict modern and contemporary agricultural and farming practices, such as Controlled Environment Agriculture (CEA), as they do not necessarily require soil as the growth medium. Accordingly, a new principle (Principle 5) has been included in the 2007 Policy to allow the development of CEA on prime agricultural land, where the location is reasonably required for operational efficiency and the scale of the development, and potential negative impacts on the surrounding environment are minimised.

CEA is defined in the 2007 Policy as *'an agricultural use carried out within some form of built structure whether temporary or permanent which mitigates the effect of the natural environment and climate. These include production techniques that may or may not use imported growth mediums. Examples of controlled environment agriculture include greenhouses, polythene covered structures, and hydroponic facilities.'*

The definition of 'agricultural use' has also been amended to include CEA to ensure it is clearly accepted as a form of agriculture, and not considered as a non-agricultural use.

Plantation Forestry

Although plantation forestry is defined as an agricultural use and is dependent on the soil as a growth medium, the length of time associated with timber rotation, and subsequent inflexibility of the land use, does not necessarily make the best use of the relatively rare prime agricultural land.

Principle 11 of the 2007 Policy allows planning schemes to deal separately with the issue of plantations. This is on the basis that timber rotations of over ten years may inappropriately exclude prime land from food crops, which can be more flexibly varied to meet market needs and cannot be successfully grown on non-prime land. This is consistent with the objectives of the 2000 Policy in ensuring that the productive capacity of agricultural land is appropriately recognised and protected. It should be noted that plantations have been established on only a small area of prime agricultural land across the State, with the vast majority occupying areas of non-prime land.

However, by virtue of the definition of plantation forestry in the 2007 Policy, Principle 11 does not prohibit the establishment of new plantations that are a subservient part of, and directly related to, other farming operations, such as the planting of wind breaks, woodlots or activities for environmental management purposes (such as salinity or erosion control). All such plantations may be harvested fully or in part at a later date. This is consistent with Principle 3 of the 2007 Policy.

Principle 11 provides each local council with the opportunity to consider whether new plantations should be allowed on prime agricultural land. It enables them to make this judgement based on the size and location of prime agricultural land and

existing plantations, the practical difficulties associated with managing plantations, and the complexity of land classification across a single farm.

The majority of these difficulties arise because of the mosaic of land classification across the State. Areas of prime agricultural land rarely match title boundaries, and in many cases, small areas of prime land are surrounded by non-prime land. If new plantations are prohibited under all circumstances on the prime land, impractical farming areas may result. If a plantation is required to strictly follow the boundaries of the changing land classification it would have significant effects on the economies and logistics of both farming and plantation forestry.

The problem of determining whether land is prime or non-prime can be avoided by using property management plans. The development of comprehensive property management plans (PMPs) is increasingly being used for a variety of land management and environmental purposes. PMPs are used to develop and document a portfolio of integrated farming activity for an entire property, including the management of areas and offsets for conservation purposes (refer Principle 12 of the 2007 Policy).

PMPs provide a mechanism for sustainable farm management and best utilisation of the land resource, and may soon be subject to a statewide property management framework.

Where PMPs are subject to some form of approval, these would supersede the need for assessment of land capability for any plantation component, where that planting does not exceed a certain proportion of the property management plan area. In these circumstances, plantation forestry becomes one component of a whole-of-farm approach based on detailed land capability analysis and other relevant factors.

Consistent with Principles 11 and 12, the 2007 Policy provides definitions for

plantation forestry and property management plans.

Plantation forestry is defined as *'the use of land for planting, management and harvesting of trees predominantly for commercial wood production, including the preparation of land for planting but does not include the milling or processing of timber, or the planting or management of areas of land for shelter belts, woodlots, erosion or salinity control or other environmental management purposes, or other activity directly associated with and subservient to another form of agricultural use.'*

A property management plan is defined as *'an integrated plan for part or the whole of a farm or number of conjoined farms, prepared by a suitably qualified person which details property design and management by matching economic production to the property's ecological characteristics and resources.'*

The 2007 Policy also provides for transitional arrangements, which recognise that the introduction of a prohibition on new plantations might disadvantage some land owners and forestry interests.

The transitional arrangements allow for a six-month grace period for the establishment of new plantations where there is demonstrable proof of an intention to establish a plantation during that period (such as applying for the status of a private timber reserve).

Removal of RPDC sign-off process for the development of prime agricultural for non-agricultural use

Principle 2 of the 2000 Policy indicates that non-agricultural uses alienate prime agricultural land. Principle 4 of the 2000 Policy provides exceptions for proposals of significant economic benefit to the region, where the RPDC confirms that there is an overriding community benefit.

Under the 2000 Policy the RPDC is required to confirm such benefit before

allowing a planning authority to consider an application.

The 2000 Policy requires this type of proposal to pass two tests. It must comply with the planning scheme or amendment, and have approval from the RPDC confirming an overriding community benefit.

Principle 7 of the 2007 Policy removes the preliminary RPDC sign-off and replaces it with the normal assessment process associated with planning scheme amendments.

This allows for proposals of significant benefit to the region to be considered as an amendment to a planning scheme taking into account the social, environmental, and economic costs and benefits to the community. In this way, the RPDC is still responsible for the approval of such proposals, but through a planning scheme amendment process only.

2.3 Implementation Guide

Many local government submissions received during the consultation period highlighted the need for supporting material to assist to implement the Policy through their planning schemes more effectively and consistently.

The Implementation Guide has been devised to assist planning authorities to identify methods and approaches to achieve the requirements of the 2007 Policy, and provides direction on the amendment of existing planning schemes and preparation of new ones.

It provides for consistency with the Common Key Elements Template for Planning Schemes, introduced by Planning Directive No. 1.

The Implementation Guide is structured into three parts:

Part 1 Outlines a method for determining the land to which the Policy applies.

Part 2 Outlines the parts of planning schemes that can be used to deliver the principles of the Policy.

Part 3 Outlines an approach for reviewing planning schemes to determine the extent of changes that may be necessary to achieve compliance with the Policy.

2.4 Model Planning Scheme Provisions

The Model Planning Scheme Provisions provide examples for planning authorities on how to implement the 2007 Policy through their planning schemes. They provide a benchmark for the review of existing planning schemes and the preparation of new ones.

There are a variety of provisions in current planning schemes that address the 2000 Policy, and these have been considered in the preparation of the model provisions. The model provisions are intended to achieve the requirements of the Policy across all planning schemes with greater certainty and more consistency.

The model provisions seek to ensure that development of agricultural land is not unreasonably restricted, while efficiently and fairly protecting Tasmania's agricultural land resource in accordance with the objectives and principles of the Policy.