

# IMPLEMENTATION GUIDE

## To assist in implementing the State Policy on the Protection of Agricultural Land 2007 through Planning Schemes

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### Purpose

The State Policy on the Protection of Agricultural Land 2007 (the Policy) is structured as a set of objectives and principles to foster sustainable agriculture in Tasmania. The Policy will be implemented through planning schemes and other instruments that regulate use or development of agricultural land. Planning authorities will be required to amend their planning schemes so that they comply with the Policy.

The purpose of this Guide is to provide an example of 'good practice' methodology to assist planning authorities to implement the Policy through their planning schemes. It covers both the amendment of existing planning schemes and the preparation of new planning schemes and has been prepared to assist planning authorities to identify mechanisms and approaches to achieve the requirements of the Policy.

This Guide is not intended for the purpose of determining appeals against development applications.

The Implementation Guide is structured in four 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 comply with the Policy. In essence it provides a process for planning authorities to:
  - (a) undertake an audit of planning schemes to assess their level of compliance with the principles of the Policy;
  - (b) prepare a response to outline the level of compliance; and
  - (c) prepare an implementation plan to ensure that the planning scheme achieves the desired outcomes.
- Part 4 sets out a range of 'best practice' or model provisions that are considered consistent with the Policy for inclusion in planning schemes.

## **Part 1 Defining and mapping Agricultural Land**

### **1.1 General**

In undertaking a review of an existing planning scheme or preparing a new draft planning scheme, it is important to define the extent of the area to which the Policy applies. The Policy applies to all agricultural land in Tasmania and defines 'agricultural land' as all land that is in agricultural use or has the potential for viable agricultural use.

### **1.2 Agricultural Use**

The Policy defines "agricultural uses" as animal and crop production and includes controlled environment agriculture and plantation forestry.

Agricultural land also includes land that has the potential to be used for agricultural uses, provided agriculture represents a viable use of the land. The objective of this approach is to ensure that the Policy only applies to land capable of realistically being used for agriculture. The aim is not to unnecessarily restrict development on land that may theoretically support agricultural use but where in reality such use would not be feasible or practical. In determining viability, relevant considerations many include environmental factors, land size or adjacent land uses.

An example of where agriculture may not be viable might be a 2000 sq metre vacant block of land classified as Class 2 in terms of land capability but surrounded by residential uses. In this case despite the land classification indicating high value, the size and proximity to residential uses suggests that agricultural use would be severely restricted and impractical. In this instance there would be a case for the planning authority to determine that the land does not fall within the definition of agricultural land.

### **1.3 Land Capability mapping**

The Policy utilises the land classification system developed by the Tasmanian Department of Primary Industries and Water (DPIW). This system categorises land into seven classes, divided into 'prime agricultural land' (Classes 1, 2 and 3) and 'non-prime' agricultural land (Classes 4, 5, 6 and 7).

These classifications are based on general limitations and versatility of the land in supporting different agriculture uses. Classes 1 and 2 have high suitability for cropping and pasture, while Class 3 land has medium suitability for cropping but high suitability for pastoral uses.

The Policy establishes different requirements for the use and development of prime and non-prime land.

Although land capability mapping has not been carried out for the whole State, DPIW is confident that over 90% of the State's prime agricultural land has been mapped.

The total area of prime agricultural land in Tasmania is estimated at 107,824 ha, which equates to 4.3% of all agricultural land and 1.6% of the total land mass.

Mapping of land capability is generally at a scale of 1:100,000 with some areas mapped at 1:25,000. This means that the majority of the land is mapped at a scale that is accurate to parcel sizes of around 64ha, leading to a potentially high degree of error in locating the exact boundaries between soils of different capabilities. The 1:100,000 mapping cannot be relied upon to make decisions on land use at an individual property level.

Land capability mapping is much more useful for broad strategic land use planning, zoning, and as an indicative first cut for specific property farm planning and management.

Assessments of development proposals that might convert prime agricultural land to non-agricultural uses may require more detailed land capability assessment than that currently able to be provided by DPIW's Land Capability mapping.

It is important to ensure that the available land capability mapping is used to determine the broad land uses through zoning, and the more detailed controls on specific developments and uses are set through the provisions for a relevant planning scheme zone or zones.

## **Part 2 Policy application through Planning Schemes**

### **2.1 General**

Planning schemes offer a range of methods to implement the Policy. This section examines the various components of planning schemes and explains how they could be used to give effect to the Policy.

### **2.2 Zoning**

Planning scheme zones define areas by appropriateness for a broad type of land use or by a common characteristic. These uses might be residential, commercial, industrial, rural or environmental management.

Many parts of Tasmania that consist of land classified as prime agricultural land have already been developed for non-agricultural uses. For example, large areas of the major cities and towns along the North West Coast are built on prime agricultural land.

The Policy is not generally directed at protecting agricultural land that has been zoned for non-agricultural uses. The exception to this is where land has been zoned for non-agricultural uses but has not yet been developed to a point where agriculture would prove unviable or would introduce unacceptable land use conflicts. In these circumstances there may be a case for revisiting the zoning to ensure it reflects the value of agricultural land as a key State resource. This might result in rezoning some areas from residential or rural residential to rural.

This strategic approach is important in delivering the Policy intent as it seeks to ensure that the 'first cut' of planning controls diminishes the potential for

conversion of agricultural land to non-agricultural uses and the likelihood of future fettering of agriculture through land use conflicts.

Under the Common Key Elements Template for Planning Schemes which is required to be adopted for new schemes by Planning Directive 1, there are 15 zones. Of these, 2 are predominantly rural in character:

- The **Rural Living Zone** provides for residential opportunities, however it recognises that residential amenity will be influenced by the rural character of the area.
- The **Rural Resource Zone** provides for the sustainable use or development of resources for agriculture, aquaculture, forestry, mining and other primary industries.

The initial mechanism for protecting agricultural land from conversion to non-agricultural uses should be to zone the land Rural Resource.

Secondary mechanisms include the specific provisions of the Rural Resource Zone - or other zones - addressing use and development including subdivision, to ensure there is no compromise of potential viable agriculture uses through introducing land use conflicts.

Conversely, where a planning scheme determines that some areas of agricultural land, including prime agricultural land, should not be zoned as Rural Resource, it is not appropriate for the relevant zone provisions to require the same level of protection from conversion of agricultural land to non-agricultural uses as would be rigorously applied in the Rural Resource zone.

Some zones such as the Rural Living Zone, although primarily focused on providing residential opportunities, must also acknowledge that some agricultural activities can occur within the zone and in any adjacent Rural Resource Zones. To ensure that agriculture is not unreasonably constrained and conflicts with other land uses are limited, it may be necessary to introduce provisions addressing the impacts of potentially conflicting land uses on each other.

## **2.3 Use and development issues**

The two main Policy issues that need to be addressed through planning scheme provisions (primarily within the Rural Resource Zone, but also other zones that allow agricultural activity), are:

- conversion of land to non-agricultural uses; and
- limitation or 'fettering' of existing or future agricultural activity.

### **2.3.1 Conversion of agricultural land**

Conversion of agricultural land can occur directly through development of non-agricultural uses such as residential, commercial, industrial, or utility, or through development of some intensive forms of agriculture. It can also occur in an indirect way through the subdivision of land into units that are not viable for agriculture or which fragment large parcels of agricultural land.

The potential impact of conversion needs to be examined in the context of the site. Although the majority of non-agricultural developments represent a permanent conversion of land to a non-agricultural use, some uses may be temporary or capable of removal allowing the land to revert to an agricultural use.

The nature and scale of construction, associated infrastructure, duration of the use and community expectations indicate that residential development, in the vast majority of cases, should be considered a permanent change of land use. In some rare situations the development of a house might be considered as necessary part of an agricultural use. These situations technically do not represent conversion where the house is an integral part of the agricultural activity. These circumstances will be considered in more detail later.

Development of other uses on agricultural land will vary in terms of the amount of land occupied, expected life span of the development, and degree of land use conflict that might be anticipated where the development is in close proximity to agriculture.

Generally any use that involves extensive capital investment in 'bricks and mortar' is unlikely to be removed to allow access to the agricultural land. Even where this might be an option it is usually only after a considerable number of years or decades. This results in conversion of the land, if not permanently, at least for an extensive period of time.

There are particular circumstances where the conversion is required to allow a project that offers substantial community or economic benefits because of its specific location. In these situations these benefits must be weighed against the loss of the agricultural resource. Development of utilities or infrastructure for electricity, telecommunications, water, sewerage, transport or similar services more clearly delivers a community benefit, but other projects may satisfy a benefits test based on their particular characteristics. Issues that need to be considered in such cases include the necessity for the specific location, the amount of land to be converted, the impact the proposal would have on surrounding agriculture, and the importance of the project to the community.

Some forms of agriculture might also be considered as converting agricultural land. Intensive agricultural industries such as piggeries, and some greenhouse developments cover the soil and make no use of it for growing agricultural produce. The community and economic benefit test referred to above can be applied here but there may be additional considerations relating to the proximity of other agriculture and supporting infrastructure such as farm machinery, farm labour, freight routes, irrigation schemes, and climatic conditions. This issue is discussed in more detail in section 2.6 of this Guide.

### **2.3.2 Avoiding land use conflicts and fettering of agriculture**

A primary focus of the Policy is to enable farmers to undertake agricultural activities without being unreasonably constrained by conflicts with adjoining non-agricultural land uses. This goes beyond controlling the conversion of agricultural land and requires the appropriate management of the use and development of all land in a way that does not restrict, hinder or limit agricultural activity nearby.

The potential for land use conflicts in semi-rural or rural areas is well known. The conflicts are commonly between new residents to an area and existing farming activities. Although most of the causes of conflicts emanate from the farm, some originate from the residential activity adjoining farms. The range of possible conflicts is large and includes noise, odour and particulate emissions from farming operations, and the impact of introduced domestic animals on livestock farming and domestic plants on cropping operations. The consequences are very often a limitation or reduction in the efficiency of the agricultural operation.

Other States have required land buffers to separate conflicting uses, however this often results in farmers having to provide a buffer on farm land to protect the amenity of residential activity. Although this might avoid land use conflicts it effectively takes areas of agricultural land out of production, which is at odds with the intent of the Policy. The broad scale use of buffers to limit conflict between general agriculture and non-agricultural uses is not favoured but may have application in specific cases where broader strategic planning and management options cannot be used.

The preferred approach is to consider the concept of fettering in the arrangement and juxtaposition of zoning in the first instance. Standard buffer distances are helpful in assessing the appropriateness of adjoining zones under certain topographic situations and in determining lot sizes where potentially conflicting land uses might occur.

Where planning schemes allow use or development that may conflict with permitted agricultural uses, proposed activities should be assessed using performance criteria that require that the activity does not 'fetter' the adjacent agricultural activity. These performance criteria should either refer to 'fettering' using be based on the definition in the Policy or fully describe the effects of fettering in alternative words.

Standard 'best practice' planning scheme provisions dealing with land use conflict and 'fettering' are provided to accompany this Implementation Guide.

## **2.4 Integral use and development**

Principle 4 of the Policy recognises that some forms of use and development which converts or alienates prime agricultural land from production is integral to agricultural use and therefore is consistent with the Policy.

Under the Policy, an integral use or development is defined as:

*"integral" in relation to use or development means a use or development that is a necessary part of an agricultural use. It will vary on a case by case basis but generally may include farm sheds, storage areas, barns and the like, water storage areas, and dairies. Houses and workers accommodation are generally not considered to be integral except in situations of intensive agricultural operations requiring significant on-site supervision.*

It is important to clearly distinguish between an integral and incidental use. 'Integral' implies a closer dependency than 'incidental', which refers to activities or development that are a minor accompaniment to the main use. An example of an incidental use is a caretaker's flat as part of an industrial use. It is a minor additional aspect of the industrial use but it is not integral or necessary for the industrial use to function.

Many developments on agricultural land are clearly integral to the agricultural activity. These include farm buildings such as machinery sheds, barns, silos and storage areas. If the agricultural activity is pastoral in nature, it may include stockyards, shearing sheds or dairy buildings.

The majority of contentious situations concerning integral or incidental development, involve developments that are related to the agricultural use but are not a necessary part of it. Examples include houses for farm workers and tourism ventures such as 'farm stay' accommodation. While these are clearly connected to farming activities the Policy seeks to ensure that only use and development that is a necessary part of the farm is considered integral to an agricultural use.

To establish that other uses are integral, the relationship must be one of the agriculture relying on or needing the other use to be in that location. In the case of residential uses there needs to be a clear demonstration that the farming activity requires a farmer or worker to be on site for the efficient or effective conduct of the farming activity. It is not adequate to simply demonstrate that it is more convenient for the worker to be living on the farm.

Farming activity that requires very close and regular monitoring and intervention especially after normal working hours may comply with such conditions.

Situations involving visitor accommodation or a tourist attraction based on the farm produce or environment will rarely be integral to the agricultural use. In these circumstances the dependent relationship is characterised by the tourism activity being reliant on the farm rather than vice versa.

Financial dependency is not considered an appropriate test of integral status. A 'farm stay' accommodation business may well assist in financially supporting the farmer but it is not in itself a necessary part of the farming activity. These uses provide supplementary income and should not be viewed as integral uses.

This Implementation Guide sets some basic principles and tests for determining if a use or development can be considered integral to the agricultural use, however, each case must be assessed on its merits.

## **2.5 Conversion of prime agricultural land for utilities**

The Policy anticipates the need to allow conversion of prime agricultural land for non-agricultural use and development for utilities and other proposals of significant community or economic benefit.

Development of utilities is generally considered to be in the public interest. The Policy provides for planning schemes to set performance criteria for assessing

utilities as discretionary applications where the impact of the proposal on agricultural uses can be weighed against broader social, economic and environmental benefits specifically taking into account the suitability of the particular location and the amount of prime agricultural land converted.

Standard 'best practice' planning scheme provisions dealing with the development of utilities are provided to accompany this Implementation Guide.

## **2.6 Alienation of prime agricultural land for intensive agricultural uses**

Development of land for some agricultural uses also converts prime land because the type of agriculture is not dependent on and covers the soil with buildings or structures.

However, the Policy distinguishes between 'controlled environment agriculture' and other intensive agricultural uses such as intensive animal husbandry.

Controlled environment agriculture (CEA) is defined 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 activities include production techniques that may or may not use imported growth medium.

CEA does not always alienate prime land, and where structures do cover areas of land they are often temporary in nature and relatively easy to remove, thereby allowing future use of the soil.

In some circumstances they may be an adjunct or complementary form of agriculture to traditional crop production, making use of the same farming infrastructure and systems, and linking to existing markets and transport routes.

The structures used in CEA are also potentially visually intrusive and can have a range of environmental and social impacts.

In Tasmania, these developments have the potential to significantly add to the range of agricultural produce but there is a limited number of locations that provide the optimum climate required. Consequently the Policy provides that planning schemes may, under certain circumstances, allow CEA developments where they occupy prime land

The type of issues that should be taken into account in assessing CEA activities are set out in Principle 6 of the Policy and include the amount of land they would alienate, the impacts on the surrounding environment, and whether the particular location is reasonably required for the efficient operation of the proposal. Consideration of visual impacts on the rural landscape might also be relevant.

Standard 'best practice' planning scheme provisions dealing with the development of utilities are provided to accompany this Implementation Guide.

Principle 7 also states that other proposals of significant benefit to the region,



(which may include intensive agricultural industries) that may cause prime agricultural land to be converted from agricultural use, should be considered as an amendment to a planning scheme taking into account the social, environmental and economic costs and benefits to the community.

Consequently such proposals will be approved only after a comprehensive assessment of an amendment as a specified departure from the planning scheme. This would be consistent with the Policy despite the conversion of prime land because the criteria for assessment in Principle 7 would have to have been met.

Note that the test for these proposals should not be set out in the planning scheme as they are outside of its jurisdiction. The test would be applied as part of the assessment of a proposed planning scheme amendment, initially by the planning authority and then by the RPDC if the planning authority agreed to initiate the amendment.

## **2.7 Criteria for assessing significant economic proposals as specified departures to planning schemes**

Any specific amendments for proposals of significant benefit to the region sought in accordance with Principle 7 must demonstrate an overriding community benefit based on consideration of the social, environmental and economic costs and benefits – a triple bottom line assessment.

The essence of the test is that notwithstanding the alienation of prime agricultural land, the proposal is of such overriding importance to the community that it should be allowed to proceed. The assessment should have regard to three specific aspects of a proposal: - regional economic benefits, community benefit, and the requirement for the location.

A detailed analysis clearly demonstrating the regional economic benefits should be a part of any proposal. 'Region' is taken to mean more than the immediate surroundings. A region may be an area having some characteristic or characteristics that distinguish it from other areas. It may be a local township and its surrounding social and economic catchment; it may be the full extent of a municipality or extend across municipal boundaries. To a large degree it will depend on the nature of any proposal to define the area of influence.

Community benefit may include, but goes beyond, economic benefit. It is a more intangible term that goes to broader issues of the general well being of a community in terms of its environmental assets, social capital and capacity building.

Demonstrating that the specific location is needed must consider why the proposal is not feasible in another location.

This will not be clear-cut when considering a proposal that does not have an absolute dependence on, or benefit for, immediately adjacent existing infrastructure. In these circumstances it would need to be demonstrated that there was no suitable alternative site. Land tenure is not necessarily a justification for concluding that there is no suitable alternative. In other words

the justification for siting must look beyond the boundary of the land on which the use or development is proposed.

## **2.8 Protection of non-prime agricultural land**

Principle 8 requires planning schemes to determine the appropriate level of protection for non-prime agricultural land, taking into account its local and regional significance for agriculture.

This recognises that the use of non-prime agricultural land is a matter best dealt with by planning authorities but requires the assessment of the value of land from a local and regional perspective. Substantial areas of non-prime agricultural land add significantly to the State's economy through specific agricultural activity. For example, horticultural activity such as the wine industry in the Tamar and Coal River Valleys are significant regionally; fruit and nut growing are important in the east and south of the State, while dairy herds and fine wool sheep thrive on non-prime land in the north and central areas.

Despite not being classified as prime agricultural land, these areas require the same consideration of issues in relation to conversion, fragmentation and fettering. What is different is that their protection should be the responsibility of the local authority not the State Government but this distinction does not imply that non-prime land is dispensable and can be converted to non-agricultural use simply because it is not prime land and not specifically protected by the State Policy.

Planning authorities should determine the value of non-prime land and map within their planning scheme those areas considered significant enough to protect. The standard 'best practice' planning scheme provisions that accompany this Implementation Guide are drafted to apply the same standards to land determined to be 'significant' as are required to apply to prime agricultural land.

## **2.9 Protection of land for irrigation**

Principle 10 of the Policy requires planning schemes to make provision for the appropriate protection of non-prime agricultural land within "Irrigation Districts proclaimed under Part 9 of the *Water Management Act 1999*".

This should be carried out initially through the zoning of the land ensuring that, where it is practical, all areas designated for irrigation are zoned for agricultural use. Information about areas proclaimed under the *Water Management Act 1999* is available on the Water Information System Tasmania (WIST) website managed by the Department of Primary Industries and Water <http://water.dpiw.tas.gov.au/wist/ui>

Areas proclaimed as irrigation districts are an indication of the State's willingness to invest in substantial infrastructure to increase the productivity of the land. Not only does conversion of land within these areas reduce the amount of land for production, it can also negatively impact on the efficiency of the agriculture nearby through 'fettering'. This is particularly relevant because there is a likelihood of more intensive agriculture taking place within irrigation

areas with greater impacts on residential amenity.

The growth of Tasmania's farm sector is increasingly reliant on the development of water storage and irrigation systems. It is sound strategic planning to consider the future potential of all land and to avoid land use planning decisions that negate future options. The identification of areas with the potential for irrigation should be thoroughly considered in strategic land use planning.

Irrigation areas identified can be dealt with in the planning scheme as significant agricultural land and should be indicated on planning scheme maps.

## **2.10 Agricultural uses dependent on the soil**

The focus of the Policy is to ensure that the productive capacity of agricultural land is available for crops that utilise the soil and not to dictate what is produced from that soil or how it is farmed. Principle 11 makes it clear that as long as the use of agricultural land, including prime agricultural land, is dependent on the soil as the growth medium, the choice of crops that are grown is not something a planning scheme should prescribe.

Any agricultural use that makes use of the soil either through direct growing of crops or grazing of animals on pastures is consistent with this Principle whether the use is a walnut orchard, pyrethrum or hemp crop, a dairy farm, opium poppy crop, or plantation forestry.

All of these fall within the definition of agricultural use in the Policy as they are dependent on the soil. Consequently a planning scheme must not prohibit any of these types of agriculture on agricultural land zoned for rural purposes.

## **Part 3 – Review of Planning Schemes**

### **3.1 General**

This section outlines the recommended steps that should be undertaken to review an existing planning scheme once the areas of agricultural land have been identified in accordance with Part 1 of the Guide.

### **3.2 An “audit” of planning scheme provisions**

An audit of existing planning schemes against the objectives and principles of the PAL State Policy should assess:\*

- (a) implications for the planning authority’s settlement and infrastructure strategies;
- (b) whether zoning and zone intents are consistent with the Objectives and Principles of the Policy, particularly regarding the use or development potential of:
  - (i) areas of undeveloped rural land;
  - (ii) areas of prime agricultural land based on Land Capability mapping
  - (iii) areas of locally or regionally significant agricultural land
  - (iv) undeveloped land capable of being serviced and developed, e.g. reserved residential, commercial or industrial zoned land or similar; and
  - (v) zoning outside existing settlements that provides for residential, commercial and industrial uses other than in zones primarily intended for those purposes;
- (c) whether there are adequate provisions and standards in the planning scheme for:
  - (i) limiting fragmentation of land;
  - (ii) limiting the conversion of agricultural land to non-agricultural uses;
  - (iii) allowing integral use and development to establish as part of an agricultural use;
  - (iv) limiting the effect of non-agricultural use and development on nearby agriculture;
  - (v) providing for rural living opportunities in areas that do not conflict with the Policy;
  - (vi) development of utilities on agricultural land in appropriate locations;
  - (vii) allowing farmers to establish controlled environment agriculture in appropriate locations;
  - (viii) allowing any agricultural use that is dependent on the soil as the growth medium to be established in a rural zone.

### **3.3 Preparation of an assessment report**

Based on the audit, an assessment report should be prepared indicating how the planning scheme performs in relation to the matters outlined in 3.2. It should also identify how and to what extent the planning scheme currently meets the Policy's objectives and principles.

The assessment report should outline the level of compliance to support the initiation of any subsequent planning scheme amendments or be able to justify a position that no amendment is necessary.

In preparing the assessment report, planning authorities should seek and use the best reasonably available information including land capability mapping and irrigation potential.

An assessment report should consider the issues raised in Part 2 of this Implementation Guide.

### **3.4 Preparation of an implementation plan**

Based on the assessment report, an implementation plan should be prepared to identify the issues to be addressed in the planning scheme, if any, to achieve the intent of the Policy.

An implementation plan should clearly identify areas considered as prime and non-prime agricultural land as defined in the Policy.

In the interests of community involvement and to foster confidence in the implementation process, a draft of this implementation plan, together with the assessment report, should be released for public comment.

### **3.5 Preparation of amendments to the planning scheme**

Based on feedback from public consultation, draft amendments should be prepared.

These draft amendments should then pass through the normal planning scheme amendment process as outlined in the *Land Use Planning and Approvals Act 1993*.