

Draft State Policy on Protection of Agricultural Land - Comments

Environmental Defenders Office

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Introduction

The Environmental Defenders Office is a government and member funded community legal office advising the general public and community groups on legal remedies for environmental problems in their local area. Our comments are based on concerns raised by our clients about activities in the rural environment. These range from pollution to subdivision. We welcome this opportunity to contribute to the formulation of the State Policy on the Protection of Agricultural Land in the hope that it will prevent conflicts and better enable them to be resolved, if they do arise.

General Comments

State Policies have the status of subordinate legislation under the *State Policies and Projects Act 1993*. A State Agricultural Policy has scope to make legally binding Statewide provisions for sustainable land use. This scope can only be realised if the policy contains provisions which are capable of being used as a basis for litigation. Unfortunately, many provisions of the draft policy are too vague to be of any legal effect, giving general direction statements of what we would like decision makers to do. If it is adequate to simply leave decision makers to 'do the right thing' then there is no need for a State Policy. If there is need for a State Policy it must be legally enforceable. This is best illustrated by example.

Examples

Low density residential blocks abut prime agricultural land on alluvial valley soils. Due to the low rents at the edge of town a wholesale/retail company has set up and wishes to purchase land for a car park. The neighbouring farmer sells the land to the company prior to any State Policies. The council decides that the car park must obviously go next to the shops, that this is in the public interest, and approve the development. The policy as presently formulated would not stop this encroachment.

A farmer chooses to clear bushland for cattle pasture. The bushland is home to rare and endangered species. The land is cleared across a permanent creek and a steep slope. The bulldozer chooses the creek as the easier path and drives up and down the stream bed. A neighbour downstream uses the creek for irrigation and bathing. His supply of water is reduced, is subject to greater fluctuations, and is increasingly turbid due to the clearing operations in his catchment. He installs filters on his water supply, and must continue to replace them due to the siltation. The farmer would have been in breach of the provisions of the Forest Practices Code (under the Forest Practices Act), were the land being cleared for forestry purposes. As presently formulated, the Agricultural Policy is of no assistance to the downstream landowner. There is no protection for the rare species in the forest.

A hobby farmer, who works a city job and likes to run a few stock on his bush block, decides to clear her

hillside. The hill has shallow sandy soils, is steep and, following clearing, is not adequately reseeded with grass. Consequently it becomes subject to rill erosion and soil slippage. There is no remedy under the present Policy for such degradation of land.

A farmer owns pasture land bordering a coastal area. He sprays and sets fire to the dune system, and then grazes cattle on the new green shoots. This results in the formation of parabolic blowout dunes which migrate inwards, swallowing up land as they go. In addition there is severe degradation of aboriginal relics and middens along the coast. How would the agricultural policy combine with the State Coastal Policy to prevent this?

Issues

The draft State Policy on the Protection of Agricultural Land rightly states (para 5.2) that the "sustainable development of agricultural land shall be promoted", and, apparently aims to promote sustainable management practices "with the aim of achieving long term improvements in farming practices" (p,23). An environmental impact statement must therefore address the following issues:

- Non agricultural use of agricultural land
- Land Clearance
- Biodiversity
- Erosion
- Water Pollution

The draft State Policy attempts to say that subdivision of productive agricultural land for non-agricultural purposes should not occur. But it stops short of simply prohibiting subdivision on agricultural land. It should specify where subdivision must not occur. In the absence of a prescriptive provision it is a mistake to allow a 'public interest' exemption because what constitutes the public interest is not readily definable and it may mean what councils wish it to mean. This provides a back door for councils and developers to divide up agricultural land.

The draft policy is correct however to try and provide for a situation where a large development of major public benefit should not be hindered because some or all of it occurs on farm land. The public interest exemption could be restricted to level 2 scheduled premises under the *Environmental Management Pollution Control Act 1994*. Projects of Statewide significance are already effectively exempted from the policy as they are dealt with by the State Sustainable Development Advisory Council as level three projects under the *State Policies and Projects Act 1993*.

It is meaningless to talk about biodiversity, sustainability and the precautionary principle with reference to agriculture without a clear set of regulations restricting land clearance and farming practices. Restricting clearance of private land is a vexed issue and has already been examined in the course of studies relating to threatened species legislation and the Regional Forests Agreement. The Agricultural Policy is a vehicle well suited to addressing this issue in a meaningful, constructive and comprehensive way. It would be prudent if the policy contains restrictions on land clearance in the interests of biodiversity. If this is not considered feasible, there is still great value in specifying how land is to be cleared.

The Tasmanian forest industry has already seen fit to establish enforceable rules for forest clearance. These are meant to maintain the productivity of forest land by reducing soil compaction, erosion and siltation. They have been found to be of positive benefit to the industry and have been in place since 1985 in the form of the Forest Practices Code. Many of the provisions of the Code could be included directly into the Agriculture Policy. Provisions dealing with riparian strips, road construction standards, stock trampling on water courses,

and clearing on steep slopes would be particularly useful. Administration of the Code is presently the responsibility of the Forest Practices Unit. It may be advisable to expand their role to operate in conjunction with the DPIF to administer forest or scrub clearance on agricultural land.

In the absence of enforceable provision restricting land clearance there will be different rules between municipalities as is presently the case. One of the reasons for having an additional tier of regulation in the form of State Policies is to achieve uniformity across municipalities.

Comments on Specific Provisions

Draft State Policy

5.2.1 How shall prime agricultural land be protected from conversion?

5.2.6 How shall the sustainable development of agriculture be promoted and by whom?

Guidelines to Implementation

6.4 Who shall promote whole farm planning etc and how?

6.5 It is unclear what this provision is intended to achieve. Residents of Tasmania have no option about recognising Acts of Parliament be they the *Agricultural Chemicals (Control of Use) Act 1995* or the *Tasmanian Criminal Code Act 1924*. It is not clear what the outcome of a State Policy requiring recognition of codes of practice under an Act might be. Codes of practice with the status of subordinate legislation under their enabling Act are easy to enforce; however, if they are voluntary guidelines, a State Policy, being itself subordinate legislation, might have the effect of making them mandatory. If this is the intent it should be clearly spelled out.

6.6 How shall agricultural management complement the Forest Practices Code?. At present the Code is relevant to some and not all forestry operations. It does not apply to the clearance of private land for agricultural purposes. This section should expand in detail many of the provisions of the Code to cover all forest clearance on private land for agricultural purposes, include an expansive definition of 'forest,' and provide for proper stream and watercourse management, consistent with other State Policies. In the absence of this, the provision is meaningless. Similar comments could be made with respect to 6.13, 6.14, and 6.15 How is the policy going to conserve the diversity of all native flora and fauna and their habitats and land scape values in the face of unrestricted clearing and poor land management, with ensuing pollution of watercourses by fertiliser and spray runoff?. How is the precautionary principle to be applied to these issues?.

6.7 These guidelines should be incorporated into the policy by amendment as they are formulated thus giving them legal affect.

Who has responsibility to collate and distribute data? Is it the primary responsibility of the Department of Primary Industry and Fisheries?

6.11 There must be enforceable guidelines to ensure such protection. See our comments above with respect to land clearance and the Forest Practices Code.

6.12 Whose responsibility is it to develop strategies to deal with these issues? A list might be useful eg Councils, DPIF, Fire Department, Forestry Tasmania, and the Farmers and Graziers Association of Tasmania.

Conclusion

In accordance with Objective 2 (a) of Schedule 1 of the Resource Management Planning System, the policy should encourage integrated planning. As such it should make specific and detailed reference to Forest operations and the Forest Practices Code, as well as the State Coastal and Water Quality Management and other Policies which impinge on rural activity. Farming practices which include improvement of soil fertility, water harvesting and minimising fertiliser and chemical runoff onto adjacent land and into waterways should be included in this policy.

We trust that our comments are of use to the Sustainable Development Advisory Council in the development of the Policy on the use of Agricultural Land.

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