



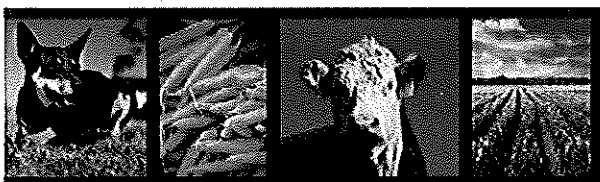
# Tasmanian Farmers and Graziers Association

Submission to:

***Review of the Primary Industry Activities Protection Act 1995***

*Department of Primary Industries, Parks, Water and Environment*

August 2014



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## 1. AGRICULTURE IN TASMANIA

The total Tasmania gross state product (GSP) was \$23.9 billion for the 2012 year. The GVP of agriculture, forestry and fishing collectively amounted to almost 9% of this total – before input supply services and value-adding, which is well above that for the nation as a whole.

In 2010/11, the farm gate value of production (GVP) of agriculture, forestry and fishing was \$1.98 billion. This comprised:

- agriculture - \$1.150 billion;
- forestry - \$235million; and
- fishing - \$597 million.

This is before considering input supply services and value-adding. Taking into account basic multiplier factors, this means the farm-dependent economy contributes more than \$5 billion to the gross state economy - in spite of adverse pressures on the forestry industry.

Over the past 25 years, the average annual rate of increase in farm gate GVP has been close to 4%. Average growth in the farm GVP over the recent past has been slightly slower than average, as a result of reduced export returns due to the high value of the \$A and increasing cost pressures along the value chain.

Milk and milk products followed by livestock and livestock products were the main sector contributors to farm production value. However, this was partly offset by reduced vegetables output associated with severe wet weather at harvest in the first quarter of 2011.

Some 10,500 people were employed directly in agriculture forestry and fishing. A further 8,500 people were employed in services to agriculture and food and fibre value-adding. This is close to 9% of the working population in Tasmania.

The preliminary Tasmanian government Scorecard data for 2010-11 (prepared by DPIPW) indicates the wholesale value of food and beverage production has remained steady, roughly in line with the previous year at \$2.7 billion This demonstrates the important role that the processing sector plays in adding value to farm gate returns and the fortunes of those who live and work in the farm dependent sector.

Furthermore, the inclusion of forestry as a long cycle crop enterprise in farming businesses in the state means that the overall economic contribution must include these figures too. Our best estimate is that in 2009/10 this added a further \$400 million to farm gate income. Clearly, as a result of the uncertainty currently evident in this sector, that figure has fallen significantly since then. Nonetheless, on a long term outlook, forestry remains an integral part of a diversified farm business.

Compared to the previous year, growth in agriculture GVP has broadly offset the fall in forestry GVP.

The vast bulk of our agricultural product is sold interstate and overseas. Farm exports in 2010/11 easily exceeded \$550 million (farm gate equivalent value) when account is taken of pharmaceutical products. The share of exports to Asian destination exceeded 50%. In addition, it is estimated that a further \$1.8 billion of raw and value-added product was shipped to the mainland.

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In 2011/2012, total exports from Tasmania were valued at \$3.196 billion. Agricultural products represented some 30% of that total – approximately \$1 billion.

Almost 25% of total exports (\$502 million) were destined for ASEAN countries. Agricultural products valued at approximately \$121 million represented 25% of that total. ASEAN countries have become increasingly important destinations too, with overall exports increasing marginally over the past three years; and food exports alone increasing significantly from \$71 million to \$96 million over the period 2009/2010 through 2011/2012. Major products exported to ASEAN countries included dairy (\$42 million); seafood (\$32 million) and wood products (\$20 million estimated from private forestry sector). Key destinations included Japan (35%), China (21%), and Hong Kong (21%).

Farmers are also significant land managers in the state, with almost a third of Tasmania's land area of 68,300 sq km committed to agriculture.

These figures clearly confirm the importance of the sector as an economic driver for the state's economy – and also demonstrate that agriculture is a more significant contributor to the Tasmanian economy than in any other state. With this in mind, it is clear that Tasmania needs to ensure that the agricultural base of the state remains competitive and profitable.

## 2. ABOUT THE TFGA

The TFGA is the leading representative body for Tasmanian primary producers. TFGA members are responsible for generating approximately 80% of the value created by the Tasmanian agricultural sector.

Operationally, the TFGA is divided into separate councils that deal with each of the major commodity areas. As well, we have a number of standing committees that deal with cross-commodity issues such as climate change, biosecurity, forestry, water and weeds. This structure ensures that we are constantly in contact with farmers and other related service providers across the state. As a result, we are well aware of the outlook, expectations and practical needs of our industry.

With our purpose being to promote the sustainable development of Tasmanian primary industries, the TFGA is committed to ensuring that the agriculture sector in Tasmania is profitable and sustainable. We are also committed to promoting the vital contribution the agriculture and horticulture sectors make to the environmental, social and economic fabric of the Tasmanian community.

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### 3. OVERVIEW

There are many issues associated with the continued expansion of urban settlement in Australia. One of the most important of these is the impact of 'urban sprawl' on areas previously rural in nature.

Varying approaches to this issue have been taken in jurisdictions across Australia. In many cases, these have been based on international policy frameworks.

In Tasmania, the key policy tools specific to agricultural lands are:

- the Primary Industry Activities Protection Act 1995 (the so-called 'Right to Farm' Act); and
- the Protection of Agricultural Lands Policy (PAL Policy).

The Primary Industry Activities Protection Act 1995 is now up for review and this submission forms our response to the request for comment. The Protection of Agricultural Lands Policy will be subject to a review at some future date. There are significant concerns with the operation of this policy which will be outlined at that time; and are so not the subject of this submission.

The Primary Industry Activities Protection Act was passed in October 1995 after consultation with the Tasmanian Farmers and Graziers Association, industry, state and local government and the general public.

The Act represented a new legislative approach designed to protect the right of farmers to conduct their farming activities. It was developed against a backdrop of increasing concern about new and existing threats to legal agricultural activities. Of particular concern were the clashing interests of agriculture with the expectations of lifestyle and semi-rural property owners. Long-existing farming activities were increasingly under threat as a result of complaints about some of the inevitable consequences of farming activities, including noise, tractor traffic etc. Prior to 1995, the pursuit of common law nuisance actions, or the threat of them to farmers in the state, had led to falling productivity in a number of farms and rural communities.

The Act was designed to address these concerns by affording a level of protection to the farming community against legal actions. It was introduced to specifically stop the common law action of nuisance being used to prevent farmers pursuing the normal, legitimate and statutorily authorised activities which form a necessary part of good agricultural practices.

The Act protects persons engaged in primary industry by limiting the operations of the common law of nuisance in respect of certain activities that are incidental to efficient and commercially viable primary production. It is the only 'right to farm' legislation in Australia, and is similar to legislation in the USA in that it extinguishes the common law right to claim nuisance in certain circumstances. However, intent and delivery are inevitably two separate issues. In the event, the Act has largely failed to deliver on its stated objectives.

The discussion paper posed a number of specific questions for consideration in preparing submissions. These are addressed in Appendix A. Some more general discussion has also been provided about the issues that led to the introduction of the legislation and about the way in which policy has developed over the subsequent period. Recommendations as to ways to achieve more appropriate outcomes are also canvassed.

Tasmania has the most regionalised population base in Australia. For purposes of clarity, in this submission it is assumed that this settlement pattern results in urban growth pressures on most agriculture areas across the state.

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## 4. CONTRIBUTIONS OF AGRICULTURAL INDUSTRY

### 4.1 Economic benefits from agriculture

Agriculture makes the economy in fringe areas strong. From the perspective of the agricultural land users in the district, the local economy provides great opportunities and benefits to both the farmers and the communities they serve. Access to ready supplies of labour is also important. These factors keep production costs - and thus costs to the final consumer - as low as possible.

The state-of-the-art technology being used by many of the intensive industries means large amounts of capital are invested locally.

Modern agriculture is not just about the employment of unskilled labour. It brings more economic advantage and opportunity than the simple multiplier effect of creating demand for goods and services for the industries themselves or from agricultural workers and their families.

Agricultural industries also support other employment and business opportunities. Intensive industries, like other agricultural production sectors, provide opportunities for local car, truck and machinery sellers; fuel distributors; logistics; and suppliers of a wide range of agricultural products like pumps, chemicals and fertilisers. Intensive industries also require a wide range of specialist services including irrigation, air-conditioning, processing, packaging and marketing, and labour.

### 4.2 Other benefits from agriculture

Agriculture provides far more benefit to the community than just food, jobs and investment. But many of these other benefits are less tangible and harder for the economic rationalists to put a value on. They are thus often ignored when this issue is discussed.

Scenic and amenity values are high on the list of benefits from agriculture. The Sunday drive in the country is an institutional part of the Australian psyche. We have an ingrained need for open spaces which seems to be uniquely Australian.

The prospect of a Los Angeles type cityscape, with endless tracts of housing separated by moving car park freeways is not how most of us would like to see Australia in the future. In diversity is strength, and agriculture is an important facet of this diversity.

Agricultural activities preserve the sense of open space on the fringe of populous centres, and allow our cities and city dwellers some much-needed breathing space. The demand for facilities for a range of recreational activities is another important characteristic of urban populations. Many of these activities are undertaken in areas which, almost by definition, must retain some rural sense if they are to be enjoyed

Many of our first agricultural settlements were established at what were then great distances from the city centre. These early towns have great historical value and contain many items of historical and cultural importance. If we are to understand and learn from our past, we must preserve at least some of it in context.

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Now, with urban pressures increasing, these older settlements are being engulfed and their historical value and importance is at risk of being lost. Maintenance of some agricultural activities in these areas will provide buffer zones which can preserve the character of the past.

Often, one of the major economic activities in fringe areas is tourism generated by the characteristics outlined above: open space; recreational activities; historical attractions; and fresh produce. By maintaining the agricultural nature of these areas, we can support and develop another important local industry.

#### **4.3 Fugitive industries**

Urban encroachment has not only alienated scarce and productive agricultural land but has affected agricultural producers and, ultimately, consumers. Many farmers have become fugitives fleeing from the ever-increasing pressures of urban expansion.

Moving further away from markets has often resulted in decreased productivity on less suitable agricultural land, and in increased transport costs for both inputs and products to market. Prices to consumers have risen because of these increased production costs and the need to cover the often substantial expenses involved in re-location.

These fugitive industries can also face a double jeopardy. The costs of re-location are often significant and margins for fresh produce are slim. Farmers often cannot absorb these additional costs and still remain competitive. Worse still, once moved, they can again be engulfed by the continually expanding urban tide.

It is a fallacy to assume these threatened productive industries can just re-locate when pressures become too great. Physical factors limit the area suitable for agricultural production, with very little of Australia's land area being suitable for any form of cultivation. Continued urban expansion has meant these limits have been reached, with few suitable areas remaining for farms to relocate.

#### **4.4 Sustainable development**

A realistic value needs to be put on the unique character of fringe areas. Economic success for these areas is dependent on preserving and developing what makes the area different and inviting - historic character, natural beauty and the semi-rural mix of agriculture, business and residential land uses.

In the short term, it may seem attractive to develop many new housing estates and attract more people to live in the area. However, these people need jobs, schools, public transport and a myriad of other services. There is little recognition of the real costs involved to the community in provision of these services. Additional housing and greater population also raise questions about pressure on natural resources, water management and other environmental issues. One must question the sustainability of continued, seemingly uncontrolled, expansion of urban areas.

Without careful and appropriate development, these fringe areas will become simply dormitories for other regions which provide jobs, shopping and services. Their unique character and visual amenity will be irreplaceably destroyed if there is a headlong rush to develop at any cost.

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## 5. FARMLAND CONVERSION

### 5.1 A diminishing resource

Arable agricultural land is a limited resource which seriously under threat both in Australia and internationally due to a range of factors.

There are many international studies, from developed countries in particular, which show the historical decrease of agricultural land (as measured by area).

Studies estimating loss of agricultural land in the United States show that one third of all farms are in what is now defined as peri-urban areas. Experts have also shown that one fifth of prime agricultural land in the US is located within 50 miles of the 100 largest urban areas. Between 1982 and 1992, nearly 10 million acres (over four million hectares) of cropland were lost in the US; and total sales of farm produce fell by over \$42 billion. In exurban (peri-urban) areas, sales of farm produce fell by \$19 billion. It is thought that most of this reduced production was due to losses of cropland, and estimates that each new household on former farmland costs the nation's agricultural economy more than \$100,000 in lifetime sales.

A review of Australian literature does not provide a clear indication of loss of actual agricultural land areas to urban uses, with the only clear conclusion indicating a rapidly changing mix of uses in these regions.

Although it is estimated that Australia's peri-urban areas still produce between 20 and 25 per cent of the value of Australia's agricultural output, there has been a progressive shift away from the traditional production-based land uses associated with full time agriculture to a new multi-functional land use pattern featuring a significant growth in rural residential settlement.

Several attempts have been made by the Australian Bureau of Resource Economics and Statistics (ABARES) to estimate the loss of agricultural land in Australia as a result of rural settlement. However, ABARES can only calculate the present net change in the area of agricultural holdings. These changes are subject to a number of factors, including changing settlement patterns. While at this stage there is no reliable estimate, there seems no reason to assume that the pattern will be much different to that seen in other developed countries.

This cycle of farmland conversion is summarised in figure 1 below.

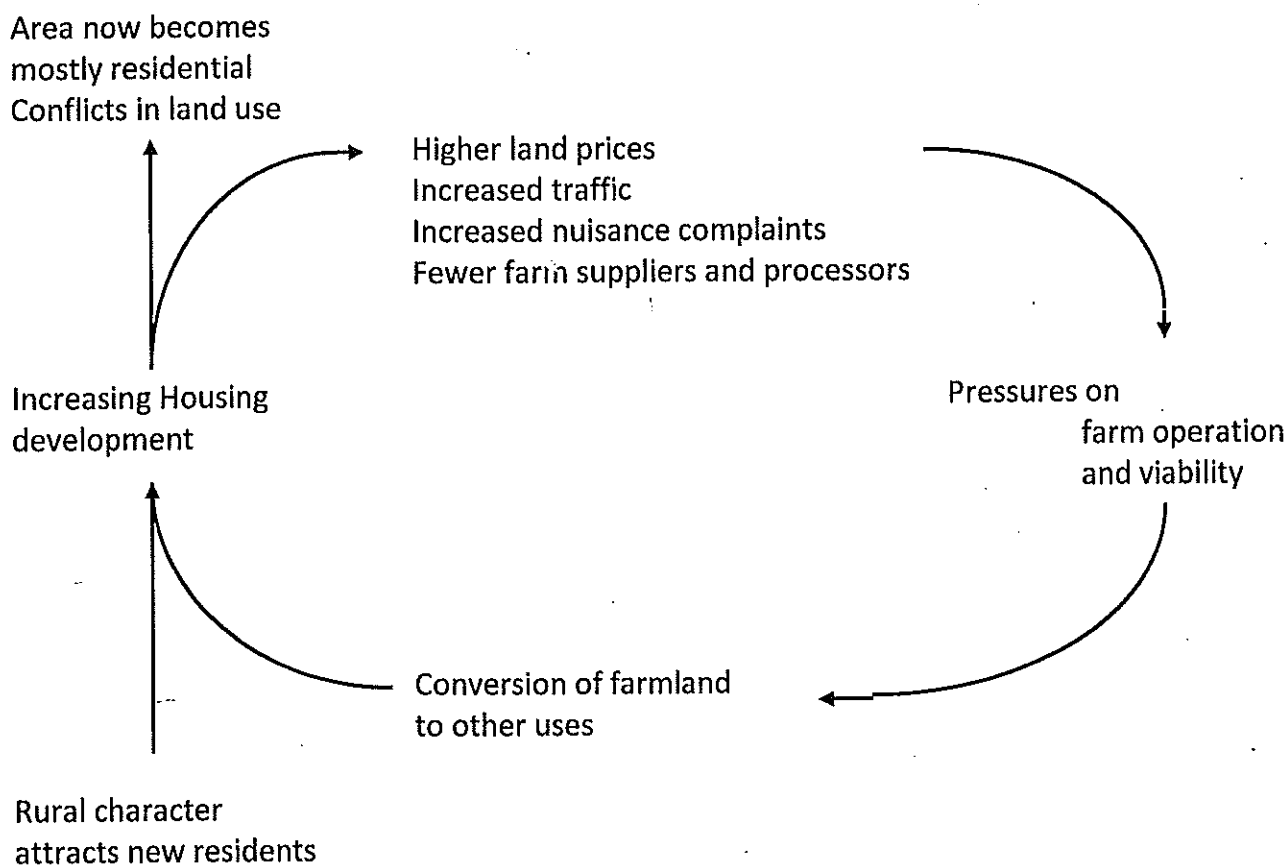
However, loss of agricultural land does not necessarily equate to loss of agricultural industry, as land productivity is irrelevant in intensive industries such as poultry and mushrooms. Having said that, there is strong concern that good quality agricultural land is rapidly being converted, mostly irreversibly, to non-agricultural uses – and in particular, to urban uses.

A number of studies have indicated that rural residential settlement has contributed directly and indirectly to the loss of agricultural land as a result of:

- fragmentation;
- 'loss of critical mass' leading to a decline in agricultural services and their viability;
- alienation of land for future agricultural production; and
- excision of land from future expansion of agricultural enterprises.



Figure 1: The Cycle of Farmland Conversion



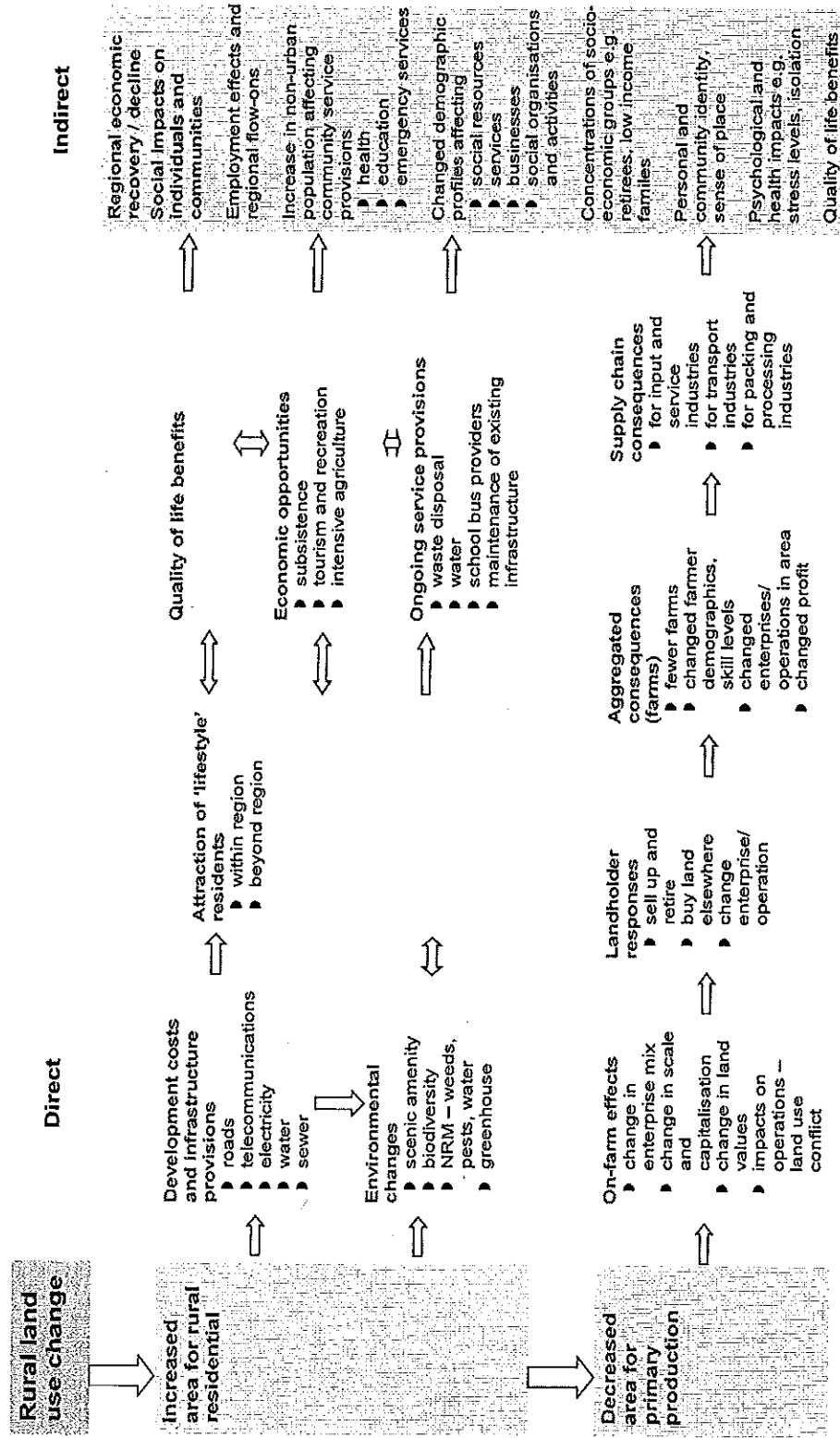
*The figure was extracted from a US text on rural land use planning and indicates that the problems being examined in the Tasmanian context are not unique and that preservation of agricultural land is a global issue.*

Figure 2 below presents a generic influence diagram of the social, economic and environmental impacts which typically result from changes brought about by conversion of agricultural uses in peri-urban areas.

The diagram shows that interactions and trade-offs between rural residential or agricultural peri-urban land use are multi-faceted and can be both positive and negative.

Planning and policy responses from both government and industry therefore need to take into account this complexity and acknowledge that peri-urban zones are by nature complex and dynamic with no set or immovable boundary between urban and rural activities.

Figure 2: Social, economic and environmental changes following farmland conversion



Source: Adapted from Hassall & Associates, Ross, H., and Mary Maher & Associates (2003) Scoping Study, Social Impact Assessment of Possible Increased Environmental Flow Allocations to the River Murray System, Stage 1, Volumes 1 and 2. Report prepared for the Murray Darling Basin Commission.

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## 5.2 Changes in land use intensity in Australia

It is estimated that only 10% of Australia's land mass is arable land suitable for soil-based agriculture and livestock production, with much of this being marginal with respect to water and nutrient regimes. Most of this land is coastal and hence in direct competition with the demands of Australia's heavily concentrated coastal urban centres.

According to the Australian Natural Resource Atlas (ANRA) data, in 2001/02 the total area of land used for primary production (livestock grazing, dryland and irrigated agriculture) was nearly 4.7 million square kilometres or 61% of the continent. Horticulture (both irrigated and dryland) accounted for approximately .08% of this. The most intensive use of land occurs in the built environment, with 0.2% being utilised for urban, peri-urban and open-cut mines. It is within this built environment that more than 80 percent of Australia's population reside (ANRA 2007- data set as at June 30, 1999).

Declining terms of trade, which have resulted in producers seeking to secure greater economic yield from each hectare, along with increasing population, have resulted in intensified land use. Over the period from 1983 to 1997, ANRA mapped the change in intensity in land use which occurred across Australia.

This was calculated for each year and Statistical Local Area ('SLA') based on the proportions of the total agricultural area in each region, and the average cost of production for 1991-1994 taken from the ABS Farm Financial Survey (ANRA 2007).

The greatest changes in agricultural land use intensity occurred in a broad crescent that curves around inside the east coast, around the south coast to the southern part of the west coast of Australia and including Tasmania. The areas of greatest change surround large population centres and often occur near irrigation and thus most likely reflect the changes in semi-intensive cropping and horticulture over the period. With the rapid expansion of irrigated farming areas in Tasmania, this is of particular significance.

The implications of these trends in intensification of land use around population centres are significant, as urban sprawl and growth juxtaposed against increasing intensity of peri-urban agriculture is causing stress to the overall resource base, and producing a range of attendant planning and policy challenges.

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## 6. PLANNING FOR THE FUTURE OF AGRICULTURE

### 6.1 The importance of planning certainty

Agriculture is a vitally important activity right across the state of Tasmania. As urban settlement expands, the interaction of urban and rural activities will be one of the most important planning issues affecting these areas in the future.

Primary production is a major creator of wealth and employment in the state. Too often, the significant contribution of agricultural producers is overlooked as urban development moves into traditional farming areas. In many cases, the value of farming activities is seen merely in terms of what the land would be worth when turned over to residential subdivision.

A difficulty of major importance to agricultural land users in fringe area is the lack of a consistent view from regulatory authorities in the areas of planning and zoning. These difficulties have arisen largely from population pressure and the change from agricultural to residential uses.

The lack of certainty about the future planning approach of the regulatory authorities is a serious concern for the local economy. Farmers and other producers hesitate to plan for the future or commit to capital investment if there are no assurances they will be able to continue to operate.

If planning and zoning difficulties continue, many producers will simply give up. They will sell their land for subdivision and move out of the area: that is if they are not forced out of the area first by pressure from residents and poor land use planning policies and decisions. Competition (in many cases from overseas producers) is very strong and there is little chance of the industries re-establishing once this has happened. Thus, the income and jobs they generate will be lost, and consumers will pay increased prices for food which may no longer be as fresh.

Agricultural land users are realistic and recognise the potential for conflict between agricultural and residential land use. They are responsible business people, willing to accept reasonable guidelines in their operation. What they are not willing or able to do is to continue to operate in and contribute economically to an area when the goal posts keep being moved - or simply go missing altogether.

The commonly held view of fringe areas as zones of 'agricultural impermanence' is not sustainable. It is imperative local councils and other planning bodies consult with the entire community and devise appropriate planning and zoning strategies which address the unique and diverse nature of these areas. There must be a balance struck which will seek to maintain character, charm and visual amenity of these predominantly rural zones, whilst still providing necessary economic development, services and employment for local residents.

### 6.2 Farmers Are Part of the Community

It is clear that, especially in Tasmania, agriculture is a key economic and social driver. It would therefore seem reasonable to expect policy makers to recognise the role agriculture has to play in further development, and to involve the farming sector in important decision making processes which will affect the future face of their communities. Unfortunately, that is rarely the case.

There are several reasons for this seeming invisibility of agricultural activities in fringe areas.

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The first is to be clearly laid at the feet of farmers themselves. Most keep themselves to themselves. Even getting them to talk to each other is sometimes a major achievement! By and large, they are very individualistic and suspicious of any moves to develop a profile for their industries. There are diverse ethnic backgrounds represented in the intensive industries; and this also contributes to the difficulties in achieving a united approach to any issues.

Farmers believe they are making an important and valued contribution to the Australian community, because they are providing the food without which we could not survive. They think they should not have to make a fuss about what they do. Australia used to ride on the sheep's back - and in those days, farmers were respected and often given special privileges and considerations. But things have changed and many have not understood that community priorities have now effectively sidelined agricultural pursuits.

Because farmers have been slow to recognise these changes, they have not seen the need to promote what they do and to stand up for their role in local economies. They feel everyone will eventually recognise their worth: but the fact is they do not - and will not, unless some concerted effort is made to alert them to the facts.

There needs to be a concerted effort to educate urban communities about the role agriculture plays in continued community well-being.

A second reason is found in the highly urbanised nature of Australian settlement. In other countries, agricultural pursuits are a common part of all town landscapes. The community sees the farm sector on a daily basis, relates to them as people and understands their role in the economy.

Until recently, most agricultural activities in Australia have been undertaken in areas remote from centres of population. Thus, there is no sense of community or of belonging between the groups. This is changing, as our cities continue to sprawl even further into the hinterland areas, and residential areas come face to face with areas of agricultural production. This leads to conflict. There is a clear need in these areas for stronger and more defined policy guidelines for the protection of the rights of all land users.

Thirdly, and possibly most importantly, the decision makers in rural local government often seem unclear as to what they want their communities to be like in the future. Some seem caught up in a competitive race with their bigger urban neighbours and strive almost without thought to increase their population base. Are these areas to be simply dormitories for workers who travel outside the area for jobs, or are they to continue to be vital growing integrated economies?

### **6.3 Rural areas need rural planning**

In the past, urban planning theories and practices have been applied to non-urban activities - and it is obvious this has not been successful.

As a result, the overall planning regulatory and policy framework tends to result in fragmented approaches to the issues associated with peri-urban interface areas. The responsibility for assessing development and subdivision proposals generally falls on local government who by their own admission are in many cases under resourced and not well placed to address these issues.

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Land use planning has a significant impact in peri-urban interface areas in that it influences land use and demand in these areas. There is a limit to what planning can achieve in dealing with the complexities of the peri-urban space, particularly in the current Australian regulatory context. Policy responses to address the shortfalls of traditional rural versus urban zoning approaches are being developed in Australia and in other international jurisdictions. These issues will be addressed later.

Agricultural land uses cannot be treated on the same basis as urban activities. It cannot be assumed that they can be continually relocated or abandoned when it becomes more attractive to subdivide for housing. People need food as well as houses.

Rural land use must be recognised as a legitimate constraint upon further urban expansion.

Agricultural land uses need to be secured by appropriate zoning and buffer requirements to reduce potential conflict between urban and rural land users.

Responsibilities are not all one-sided, of course. Agricultural land users also need to recognise the inevitability of alternate activities in previously rural areas and accept improved standards of environmental practice and accountability.

Policy makers must address a wide range of issues, including:

- what agricultural activities will be allowed?
- where will it be allowed?
- will there be appropriate "buffer" zones separating different land uses and, if so, who will be responsible for providing and maintaining the buffers?
- for how long into the future will these activities be allowed?
- what constraints will there be on these activities?
- will they be allowed to expand and if so under what conditions?
- how will conflicts between agricultural and other land users be managed?

#### **6.4 Typical impacts at the peri-urban interface**

The presence of agriculture and non-rural land uses in the one location can often generate conflict.

Agriculture can affect adjoining small rural lots which are used essentially for residential purposes. Similarly, the presence of small rural lots can create adverse impacts on the continued operation of the agricultural enterprise.

This is not a situation unique to Tasmania, or even to mainland Australia. In fact, there is a significant international body of work going back many years that explores this issue and documents many approaches that have been successfully developed to deal with this issue.

Whilst the loss of peri-urban agricultural land to urban use is a major concern, land use conflict probably concerns the widest range of stakeholders at the peri-urban interface. The change in the mixture of landholders is the source of a range of conflicts - between the traditional, and the 'newly peri-urban'.

Conflict occurs most often where there is no separation between incompatible uses, especially when this is combined with a lack of understanding of the traditional character and land use of an area.

Table 1: Potential points of conflict between agriculture and adjoining land uses

Conflict	Description
Noise	Dogs, livestock Farming equipment, pumps, spray machines, frost fans, hail cannons Ancillary equipment associated with on-farm activities (pumps, irrigators etc)
Livestock injury and harm	Feral dogs which can kill and maim livestock Feral cats carrying diseases such as toxoplasmosis
Odour	Agricultural fertilisers (particularly manures) and chemicals Intensive animal industries Application of effluent to pasture
Health concerns	Chemicals Spray drift Smoke and ash
Water	Access Quality Quantity
Nuisance	Trespass and vandalism Risk to livestock and crops Fires Wood hooking Stock theft Weeds Dumped cars and rubbish
Visual intrusion	Trail bike riding Hail netting Polyhouses
Traffic	Deliveries and pickups Workers arriving early

Land use conflict does not result exclusively from non-rural buyers moving into an agricultural area. There are also many cases of agricultural land users who subdivide their properties in order to capitalise on increased land values associated with urban sprawl.

When considering these conflict issues, it is important to remember that agriculture is a dynamic activity utilising a range of practices and equipment commonly unfamiliar to non-rural people. The notion of a rural lifestyle is engendered by an association with the pleasant character of the landscape rather than the potentially offensive noises, odours and operations which can be the reality in the agricultural areas of a rural area.

Increasing competition for the available land tends to intensify the agricultural practices at a particular site thereby increasing the potential for conflict with non-rural residents.

The resolution of land use conflict issues rarely proves to be simple; and local government authorities, in particular, expend significant resources in reactively dealing with disputes between their constituents which possibly may have been avoided through better planning policy and educational programs.

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## 7. PLANNING PROCESSES TO ENCOURAGE AGRICULTURE

### 7.1 Diversity in rural areas

If agriculture in Tasmania is to flourish, policy makers need to recognise that rural land has three productive components:

- Primary industry production - food, fibre, nursery, flowers, turf, on-shore aquaculture etc
- A place to live and work – urban, rural residential, commercial, industrial uses, etc
- An environmental resource for biodiversity and habitat.

Planning policy is already in place for urban development; and rural residential development is permitted in most rural areas. There are many policy settings in place to enhance and preserve social and community values. There is a plethora of policies to conserve environmental quality and biodiversity. There are even policies to encourage economic activity through development and other sectors. Yet there are few policies or incentives in place to encourage agriculture, despite its many advantages.

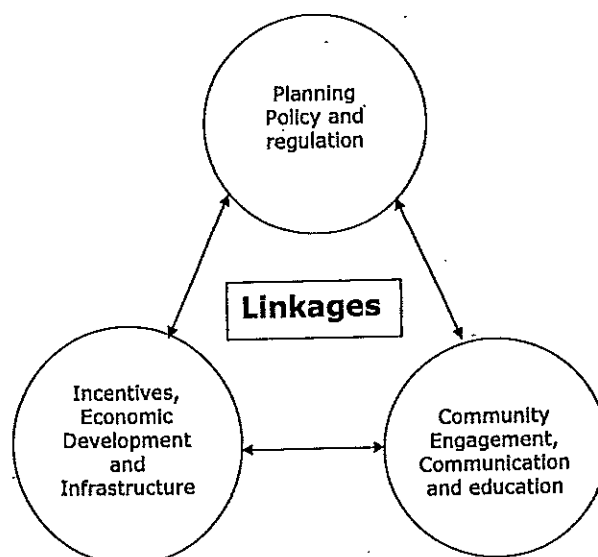
### 7.2 Balancing planning approaches

From a government planning policy point of view, urban development is generally seen as the highest and best use for land. However, this is not always the case. Some people say that the market will sort out the issues of land availability for growing food. However, the concept of market failure is very real when considering the needs of land for food security.

Research both overseas and in Australia has shown that there is a need to balance planning policy and regulation with incentives, economic development initiatives and farming infrastructure while also encouraging community engagement, communication and education.

An effective policy regime to encourage agriculture requires the application of all these elements, as Figure 3 below suggests. It is important to ensure that the linkages are there so that all responses are integrated one.

*Figure 3: Policy Responses to Encouraging Agriculture*





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## 8. POLICY RESPONSES

### 8.1 A changing policy landscape

The literature on peri-urban planning in Australia points to a cumulative decline in the capacity of the various levels of government, government agencies, and the landholders themselves, to deal with the complexity and rapid rate of change in the peri-urban regions.

One respected Australian academic in the field (M Buxton, 2006) addressed the issue in strong terms: *Governments at all levels in Australia have not recognised the need to integrate natural resource management and land use planning institutional arrangements and policy responses to issues. Even the various natural resource management institutional elements often operate in isolation from each other within the same government. Water, forestry, agriculture, public land, catchment management, land protection and land use legislation are not well integrated and are administered in a disconnected manner. Inadequate linkages exist between local government and state government decision-making processes. Governance arrangements do not respond adequately to needs. The progressive impacts of small decisions from inadequately related sectoral agencies is now exerting serious consequences.*

This fragmented institutional situation is also a factor in planning policy responses to agriculture in the peri-urban regions as the traditional approach of separate, and sometimes unrelated, planning policy for rural and urban uses adds further complexity. The concept of agricultural land 'awaiting urban development' via an ad hoc process of conversion is often regarded as an inevitable outcome of population and economic growth. As a result of this uneven approach, a contingent of planners, agriculture departmental staff and farm and conservation organisations have been calling attention to what they see as the ad hoc depletion of a 'scarce resource' which may ultimately result in a food security issue for consumers in Australia.

Not surprisingly, much of the literature that specifically addresses policy responses to peri-urban issues and agriculture tends to carry an overarching assumption that the protection of agricultural production should be the guiding principle behind the policy. This is the basis behind regulatory instruments such as the state's Protection of Agricultural Lands Policy.

However, it is clear that such responses do not recognise the widespread pressures which have driven change in significant agricultural enterprises in recent years. With diminishing terms of trade, increasing intensity has been a key strategy for maintaining enterprise viability.

As a result, more contemporary thought suggests that the policy approach used in achieving this outcome diverges into two major streams of thought:

- *preservation and environmental conservation programs.* These have the support of the greater population because they promote environmental best-management practices and maintain scenic amenity; and
- *increased profitability of farming* is required to attract new farmers, induce investment and encourage established farmers not to abandon their existing operations. This implies increasing the intensity of the farming enterprise, thereby potentially decreasing the visual amenity of the landscape.

In Australia, the Centre for Rural and Regional Innovation – Queensland ('CRRIQ') has published on this debate.

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## 8.2 Australian policy options

The formation of land use planning and policy in peri-urban Australia emanates to a great degree from the legislative and governance arrangements in place.

The responsibilities for land use policy making and regulatory controls that apply between the various government jurisdictions in Australia are essentially in the hands of each of the six Australian states and are largely delegated for administration and implementation purposes to a myriad of local government authorities.

The approaches to planning, management and policy development in peri-urban areas, as undertaken by each of the state jurisdictions, have largely been reactive measures centring on land use conflict resolution and single purpose resource management. This is not unexpected, as the focus by the states has generally been on strategic and statutory land use planning initiatives within the framework of state-wide resource management and metropolitan growth management policies. The peri-urban area has not been seen as an issue requiring its own specific planning and policy responses.

### 8.2.1 Common policy approaches

The three most common approaches to managing land use in peri-urban Australia are legislation, zoning and compulsory government acquisition of land for preservation reasons. These will be discussed below.

- Legislative approaches in Australia range from strongly regulatory, with high levels of government involvement (eg overarching state planning policies to ensure preservation of agricultural lands) through to weak and advisory in nature with low-level government intervention (eg advisory policies on protection of agricultural land use). In areas where tight regulations are introduced there is often a backlash from constituents, and for this reason many regulatory authorities avoid the use of such tools.

Not all legislation achieves a slowing in the rate of conversion of agricultural land. In fact, some legislation actually facilitates development and is therefore considered permissive and a weak form of control. Even so-called strong legislation such as the Tasmanian Primary Industry Activities Protection Act can result in the demise of farming in peri-urban areas because of weak guidelines or ineffective zoning controls eg 'right to farm' legislation which codifies the use of elements such as subdivisional rights over portions of farms.

Some experts have questioned the effectiveness of 'right to farm' legislation because, in their view it does not address the overall issue of incompatible land uses in a proactive way and fails to address 'both sides of the problem' ie the farmer may in some circumstances be able to continue operating due to his 'protected status' under the legislation, but the other landholders have not solved their amenity issue. Eventually, the resolution is forced changes to the farming enterprise, even when it is operating in an appropriate zone.

- Zoning is used to divide local government areas into different sectors with restrictions on types of use. Land use zoning entails placing restrictions on the use of the land by way of statute. This is the principal method for controlling the development of land in Australia.

Land is designated for a principal use and uses not considered to be suitable or compatible with the principal use are prohibited.

Many zones are of a weaker nature, in that they contain few prohibitions and allow a wide range of uses without the need for permits, or allow uses to be considered by a planning authority. Often zones are written intentionally to promote development. Other zones can be highly regulatory, such as those which restrict land uses and subdivision.

Zones may be inclusionary or exclusionary. Zoning is reactionary, that is, it can prevent or even facilitate uses, but cannot make them occur. Zoning can, however, prevent perceived undesirable land uses and in this way can be used to retain the possibility of alternative future options in keeping with the precautionary principle and the principle of intergenerational equity. This is an often-underestimated advantage of zoning.

Exclusive farmland zoning and zoning for large lot sizes have commonly been used in attempts to protect agricultural land from development. Such zoning measures highlight the limitations of this form of regulation.

- Compulsory land acquisition for open space and other purposes, and the compulsory transfer of financial gains from one source to a different outcome are also used for land use development controls. Governments occasionally compulsorily purchase future urban land at rural prices to prevent private profit accruing from the rezoning of land to a more intensive use, and to transfer the increase in value to public purposes.

*Table 2: Summary of Australian legislative policy mechanisms*

Policy tool	Examples of Australian usage
State Planning Policy	NSW, Victoria, Queensland
Urban growth boundary	Victoria, Queensland
'Right to farm' – removes common law right of neighbours to sue farmer for farming activities	Tasmania (PIAP Act 1995)
Dispute resolution process for conflicts over adjacent land uses	WA – Agricultural Practices (Disputes) Act 1995
Regional plans or planning authorities to protect environmental and amenity character	Swan Valley Planning Act (1995) in WA; Upper Yarra and Dandenong Ranges Strategy Plan (Melbourne) in Planning and Environment Act (1987)
Conservation/agricultural conservation easements	Victorian Conservation Trust Act (1972)

### **8.2.2 Other Australian policy mechanisms**

Table 3 below presents a summary of some of the non-legislative policy tools used in Australia with some specific local examples listed.

Table 3: Summary of non-legislative Australian policy mechanisms

Approach	Policy tool	Examples of Australian usage
Financial incentive	Rating concessions to keep agricultural land in production	Beaudesert, Kilcoy, Moreton municipalities, Queensland.
Community title (Multiple Occupancy)	Alternative subdivision allowing for clustering of residences with the remaining land used for agriculture etc.	In ACT and WA policy documents, but implementation more controversial.
Tradeable or transferable development rights	Dwelling Application Transfer Scheme – essentially 'Title rights' – created to encourage consolidation of rural allotments (and subdivision in targeted areas)	Mount Lofty Ranges and Adelaide Hills, South Australia
Service funding Arrangements	Development contribution plans	Melbourne; Sydney

### 8.3 International policy options

There has been a great deal of activity in the international planning and policy arena in developing approaches to manage peri-urban land use, much of this being in North America. A variety of planning responses to urban growth pressures and land management issues in peri-urban areas has been developed involving a mixture of land use planning, policy, and institutional and legislative initiatives.

Options include market approaches, intervention, voluntary and community based measures, or a mixture of these. The main planning interventions are through the use of statutory and strategic tools which will be outlined under the following broad categories:

- regulatory mechanisms;
- market based mechanisms; and
- voluntary mechanisms.

Within each of these options, an array of responses is possible.

#### 8.3.1 Regulatory mechanisms

- In response to a National Agricultural Land Study which found high rates of farmland conversion across the country, the US government implemented the Farmland Protection Policy Act which contained 'right to farm' laws. This Act was designed to minimise the impact Federal programs have on the conversion of farmland to non-agricultural uses.

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'Right to farm' laws are designed to accomplish one or both of the following objectives:

- to strengthen the legal position of farmers when neighbours sue them for private nuisance; and
- to protect farmers from anti-nuisance ordinances and unreasonable controls on farming operations (American Farmland Trust 1998).

The US has a plethora of 'right to farm' laws which are enacted at state and local government level, some of which are based on state agriculture agency policy statements which detail the importance of agriculture to the region (American Farmland Trust 2008). Some of the local ordinances require that a notice be placed on the deed to all properties in agricultural areas, cautioning potential buyers that they may experience noise, dust, odours and other inconveniences due to farming and ranching operations.

- Urban growth boundaries are a form of urban containment policy that are designed to control urban development beyond a well-defined limit. UGBs are a planning tool that can be combined with other mechanisms such as designated zones. If established in a proper manner, an urban boundary will lead to certainty in the minds of decision-makers and landholders. There will be greater predictability and direction in planning at the local and regional levels, and most importantly, protection of agricultural/rural land.

The two main factors influencing this differentiation between urban and non-urban land are clarity in prohibiting urban related uses on rural land, and the supply of land reserved for urban purposes. The clearer the demarcation between urban and rural land, and the more land available for urban purposes within the UGB or elsewhere (such as satellite towns or regional centres), the more successful a UGB is likely to be in preventing the conversion of rural land for urban purposes.

- Agricultural Protection Zoning ('APZ') is used in the US to designate areas where farming is the primary land use, and discourages other land uses in those areas. This type of zoning refers to county and municipal zoning ordinances that support and protect farming by stabilizing the agricultural land base. APZ limits the activities that are permitted in agricultural zones. The most restrictive regulations prohibit any uses that might be incompatible with commercial farming (American Farmland Trust, 2008).

In most states, APZ is implemented at the county level, although towns and townships may also have APZ ordinances. Zoning can be modified through the local political process. Generally, the enactment of an APZ ordinance results in a reduction of permitted residential densities in the new zone (American Farmland Trust 2008). APZ differs from the Australian zoning model only with respect to the degree of legislative strength, and prescriptiveness regarding the definition of agricultural use.

- US State executive orders are policy statements issued by governors to accomplish specific purposes. They may be advisory or carry the full force and effect of law, depending on the state. Governors from at least nine US states have issued executive orders directing state agencies to avoid contributing to the conversion of agricultural land.

State executive orders are used to build public and institutional support for other farmland protection programs in the US.

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By restricting the use of state funds for projects that would result in the loss of agricultural land, executive orders also can influence the actions of local governments. These appear to be similar in nature to a state government policy statement eg the Tasmanian Protection of Agricultural Land policy.

### 8.3.2 *Market based mechanisms*

Proponents of the market-based approach to planning in the US are highly critical of current systems. Reference is made to surveys of the impact of zoning and other land-use controls which suggest local regulations add 20 to 30 percent to the cost of housing. Research also indicates that planners are so absorbed by process and implementation that they spend little time on larger, strategic issues.

A survey of 178 California cities, for example, found that land-use permit-processing and rezonings account for almost 60 percent of planners' time. The report went on to say: *Planning that relies on end-state prescriptions and unbounded political intervention into landowner choices, even where tangible impacts are not apparent, is both costly and incompatible with dynamic economies. Market-oriented planning offers both greater predictability and greater flexibility so that communities can evolve as economies and consumer preferences change over time (Executive Summary).*

Some key examples of market-based tools include transfer of development rights; purchase of development rights; and taxation relief.

- Transfer of development rights ('TDR') programs allow landowners to transfer the right to develop one parcel of land to a different parcel of land. Generally established through local zoning ordinances, TDR programs can protect farmland by shifting development from agricultural areas to areas planned for growth.

Successful TDR programs have been established where:

- there is a supply of development rights from donor sites and a demand for the transferred right. (This demand may be at a specifically identified recipient site such as an adjacent lot owned by the donor or a wider transfer area);
  - the donor and recipient sites or areas are clearly identified;
  - there is no bias towards recipients or donors through unfair valuation of TDRs;
  - the scheme is simple to administer and are legally supported; and
  - the scheme recognises the self-interest of all parties involved such that market transfers are encouraged.
- Purchase of development rights (PDR) is interchangeable with the term 'purchase of agricultural conservation easements'. PDR programs are voluntary and non-regulatory.

These programs pay farmers to protect their land from development. Landowners voluntarily sell agricultural conservation easements to a government agency or private conservation organization. The agency or organisation usually pays them the difference between the value of the land for agriculture and the value of the land for its "highest and best use", which is generally residential or commercial development (American Farmland Trust 2008). This means that the landowner has the opportunity to realize the economic benefits accrued from the development potential of the land, whilst being able to retain the land for agricultural production.

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- *Taxation relief* is used as both an incentive and a deterrent in various countries in the management of land in peri-urban areas. In the US, tax is often used as a type of incentive and is linked with other planning tools such as TDR, PDR and so on.

The two major forms of tax relief are:

- Circuit breaker tax programs, which offer tax credits to offset farmers' property tax bills. Like differential assessment laws, circuit breaker tax relief credits reduce the amount farmers are required to pay in taxes. This could be compared to Australian rate rebates or tax deductions in return for entering into conservation covenants on a property. In Michigan, Wisconsin and New York, farmers may receive state income tax credits based on the amount of their real property tax bill and their income. The key differences between the programs are that most circuit breaker programs are based on farmer income and are funded by state governments (American Farmland Trust 2008).
- Differential assessment programs, which are laws that direct local governments to assess agricultural land at its value for agriculture, instead of its full fair market value, which is generally higher. Differential assessment laws are enacted by states and implemented at the local level. With a few exceptions, the cost is borne at the local level. Every state in the US except Michigan has a differential assessment law. Differential assessment is also known as current use assessment, current use valuation, farm use valuation, use assessment and use value assessment (American Farmland Trust 2008). This is similar to the principle employed by local governments in Australia which assess rates based on either use or zoning of land i.e. in Western Australia 'rural use land' is assessed at unimproved value whereas 'non-rural use land' is assessed at rental value.

### **8.3.3 Voluntary mechanisms**

The major voluntary policy options reported in the literature are: agricultural district programs; community supported agriculture; and industry-driven strategic planning approaches.

- Agricultural district programs allow farmers to form special areas where commercial agriculture is encouraged and protected. Typically, programs are authorised by state law and implemented at the local level. Enrolment in agricultural district programs is voluntary. In exchange for enrolment, farmers receive a package of benefits, which varies from state to state (American Farmland Trust 2008) and can include:
  - lower property rates
  - exemption from local regulations that restrict farming practices
  - eligibility for agricultural conservation easement purchase programs
  - limitation on compulsory acquisitions of land for infrastructure, and
  - limits to non-farm developments.
- The community supported agriculture ('CSA') concept originated in the 1960s in Switzerland and Japan, where consumers interested in safe food and farmers seeking stable markets for their crops joined together in economic partnerships. Called "teikei" in Japan, it translates to "putting the farmers' face on food". CSA is a partnership of mutual commitment between a farm (producer) and a community of supporters (consumers) which provides a direct economic and social link between the production and consumption of food.

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Although CSAs take many forms, the essence is that supporters cover all, or part of a farm's yearly operating budget by committing to purchasing a share of the season's harvest in advance. There are over 1,000 CSA enterprises in the USA and numbers of customers vary between 10 and 700. CSAs create a direct economic and social partnership between food producers and local community members. This form of agriculture strengthens connections between people in the community and between people and the land and as a result has the potential to address land use conflict issues in peri-urban areas. In Australia, interest in this concept is increasing.

#### **8.4 Analysis of policy options in a Tasmanian context**

This submission has provided only a high level consideration of a limited range of possible policy approaches. There are other mechanisms which would need to be considered in any more detailed study. There are, for example, some interesting developments in planning legislation in Canada that would be of relevance to the situation here in Tasmania.

Clearly, there are also a range of factors which will affect the relative suitability and applicability of any options to a specific situation.

It is, of course, not realistic to expect policy options used in other countries, or even other Australian jurisdictions, to translate neatly into a Tasmanian context. However, by undertaking a more detailed analysis of possible options, we should be able to develop a purpose-built world-class planning environment that would deliver the certainty and confidence necessary to enable Tasmanian farmers to continue to invest and expand their operations.



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## 9. RECOMMENDATIONS

Right across the state, farmers are under pressure from urban encroachment, restrictive regulatory overlays, increasing community expectations and rocketing input cost pressures that threaten their viability.

Unless these issues are successfully addressed, the economic and social stability provided to Tasmania as a result of a strong agriculture sector will be seriously threatened.

The juxtaposition of agriculture and rural residential uses inevitably results in land use conflict. There is a need to ensure that the incidence of rural land use conflict does not increase in these important agricultural areas. If it does continue, then there is a very real possibility that agricultural activities will be forced to re-locate to other areas – or to cease operating altogether. This would have a significant impact on the local areas, in both economic and physical terms.

There is thus a need to provide some security for the continuation of this important regional economic contributor. It has to be recognised that there is no silver bullet. Any solution will require the adoption of a package of complementary strategies and policies.

Consideration of this Act in isolation will not deliver the outcomes necessary to avert this threat.

We therefore believe that this review should be broadened into a wider process that investigates the underlying issues, considers possible options, and delivers an innovative and robust holistic planning scheme.

This approach would also provide support to the state government's commitment to ensure streamlined and state-wide planning legislation.

In order to achieve this, we would make the following recommendations:

9.1 Introduce as a matter of urgency an overarching State Planning Policy that prioritises the cornerstone role agriculture plays in the economic, social and environmental life of all Tasmanians.

The objectives of such a policy could include the following:

- the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,
- recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or state,
- recognition of the significance of rural land uses to the state and rural communities, including the social and economic benefits of rural land use and development,
- in planning for rural lands, to balance the social, economic and environmental interests of the community.

The state government has already committed to developing a suite of high level planning policies of this type to reinforce its identification of key economic focusses. This would be an important component of the current review of the state's broader planning policies.

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- 9.2 Undertake a detailed assessment of agricultural land in Tasmania as a matter of urgency. Without knowing our overall asset base, it is impossible to develop a coherent planning approach, or to make any informed consideration of what is essential to future industry security and what can perhaps be traded or even be given up.
  - 9.3 Introduce clear mandated zoning definitions that recognise the specific requirements of agricultural activities as part of the current review of the state's planning system. The perception that exists now where agriculture is essentially a 'remainder' use in rural zones is not tenable. These definitions should acknowledge the fact that agriculture is to some extent an industrial activity rather than a rural living area, or a passive amenity or landscape resource. The zone definitions must be consistent across the state.
  - 9.4 Introduce a 'buyer beware' certificate which identifies the existence of agricultural uses adjacent to the lot in question. The statement would provide detail of likely impacts (noise, smells, livestock etc) to ensure potential owners of property in a rural zone acknowledged and accepted these impacts existed prior to purchasing. This is intended to alert buyers of the potential for conflict before they commit to the purchase, and to make it clear that there would be no grounds for complaint about these activities.
  - 9.5 Amend relevant sections of other legislation to ensure that, as a general rule, farmers cannot be prosecuted under other legislation when using industry-accepted farming practices. This would include legislation covering animal welfare, fire management, forestry activities etc.
  - 9.6 Provide appropriate compensation where any legislation or regulation does impinge on the rights of a farmer to carry out his or her legitimate business. Farmers should be treated no differently to other citizens and are entitled to have their property rights recognised and respected in the same way as all other Tasmanians. The current practice of continual alienation of basic property rights of farmers without financial recognition is not sustainable.
  - 9.7 Develop a familiarisation program for those seeking to move to a rural area to ensure they fully understand what to expect and what their obligations to their new communities will be.
  - 9.8 Provide state government funding to establish regional level rural advisory committees to ensure farmers are appropriately engaged in local government decisions on planning, rates and other matters that would impact (positively or negatively) on farming enterprises.

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## 10. CONCLUSION

There are many issues associated with the continued expansion of our cities in Australia. One of the most important of these is the impact of 'urban sprawl' on areas previously rural in nature.

The reasons people move from the cities to live in rural areas are varied. The most often-stated one though is an appreciation of the perceived lifestyle benefits of these rural areas. However, newer residents moving into these areas often have little experience with agriculture; and many farmers have little experience with non-rural neighbours. This lack of mutual understanding and tolerance can and does lead to disputes.

Conflict situations usually arise through lack of understanding of the different needs of various land users. This is reflected in planning decisions which have alienated agricultural buffer zones and approved rural residential subdivisions in the midst of productive farming operations. The development of new suburbs in areas ill-served by infrastructure and facilities most of us take for granted is another demonstration of poor planning practices.

There is also no appreciation of the two-way impacts which need to be considered. All attention is given to the impact of agriculture on the incoming residential land users; but little thought is given to the impact of urban residents on existing agricultural holdings. Expedient decisions have regularly been made, often in response to the loudest voices, without full understanding of or consideration for the total impact on the local agricultural industry. These impacts will inevitably flow on to the local economy.

Obviously, good planning can minimise the possibility of such disputes and is the best way to overcome this type of conflict. But planning will not always solve all problems and there will inevitably be situations where problems arise. Current methods of solving these disputes are locked into traditional adversarial approaches to conflict, and seem mainly to be through the courts. As a result, they often produce "winners" and "losers", instead of finding a compromise which would respect the rights of all involved.

As yet, we do not seem to have come to grips with the implications of the problems this changing pattern is creating. Nor have we looked at ways of addressing the issues raised. The 'ostrich approach' of pretending there is no problem is a sure route to disaster. These problems are not going to go away, and we as a community need to learn to live with changing expectations in a way which achieves the best possible outcomes for all.

There is an obvious need to provide a balance between continued urban growth pressures in Australian cities, and the need to preserve farming activities within the broader urban context. It is vital for the populations of urban areas to continue to have access to varied and relatively inexpensive fresh foods, so areas of productive agricultural land must be maintained.

Any strategy for future economic development in rural areas must recognise the importance and synergy of all activities within the region. Economic, agricultural, social, historical, environmental and aesthetic values must all be considered in the context of community well-being.

However it may well be that, after considering all these options, a community decides they do not want to continue to support an economy which includes a viable agricultural base.

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If this is the case, there must be a commitment to recompense those affected by any such decisions. These costs should not be borne by individual farmers - we all must accept some responsibility for our future. Australians are renowned for their sense of fair play - and this practice of removal of basic property rights by stealth is certainly not fair.

There is a real need for all members of the community to understand the important contribution farming makes, and to ensure this is recognised in the planning process for these fringe areas. Agricultural land users are an integral part of any urban community, and need to be accorded the status they deserve in their own right: to be on an equal footing with other land users.

The preservation of agricultural areas has many benefits to the community. Agriculture provides employment and income for local communities; it adds to the community amenity, through recreational, tourism and water catchment benefits; and it provides varied, reliable high quality fresh food all year round.

There is a clear need to plan for agricultural land uses in appropriate areas, rather than assume that these activities can be relocated or abandoned when alternative uses are proposed.

The first step in this process will be for agriculture to be recognised in the planning process as a legitimate land use in its own right, rather than a holding store of land for urban subdivision. This will require the government to consider a root-and-branch review of all state planning priorities and instruments.

The state government has recognised agriculture as one of the key economic drivers for Tasmania. On that basis, it has committed to ensuring the protection and expansion of farming businesses across the state.

Agriculture makes significant contributions to local economies but, without some assurance about the future of agricultural land use, such contributions are likely to dramatically reduce. Farmers need some security of tenure - they cannot operate their businesses if they live in fear of being "re-zoned" out of their livelihood.

We therefore urge the government to give careful and detailed consideration to the issues raised in this submission.

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## APPENDIX A: DISCUSSION PAPER QUESTIONS

### 1. Are there any other examples of innovative 'right to farm' laws that Tasmania can learn from?

This issue has been addressed in the body of our submission.

The fundamental principle of such laws is that they protect farming enterprises within designated areas and prohibit any litigation against an activity considered by the legislation to be bona fide primary production activity. The key to success of such mechanisms is that farming must be treated as a desired activity in its own right, rather than an activity that can be carried out when all other things have been first taken into account. In other words, successful must have primacy over other legislation or, at the very least, 'right to farm' laws must have the same standing as other legislative and regulatory tools.

### 2. Are 'right-to-farm' laws the appropriate mechanism to resolve land use conflicts?

In our view, right-to-farm' laws are only one of a suite of planning tools to minimise and resolve land use conflicts. However, as a stand-alone tool, these laws are not sufficient. Our submission has outlined a range of other mechanisms that could be considered in developing a robust approach to peri-urban planning in Tasmania.

### 3. Has the *Primary Industry Activities Protection Act 1995* been an effective tool in upholding farmer's rights?

In our view, the Act has not been effective. The Act is subservient to most other legislative and regulatory tools and is essentially a tool of last resort.

This has meant that it is rarely able to be successfully used by farmers, as other legislation has already been applied and hence impacted on operational viability.

However, this 'right to farm' law is often the only mechanism available to farmers. This has resulted in much frustration, as drawn-out and expensive actions almost inevitably fail. This has left farmers feeling as though they have no avenues to deal with obfuscatory bureaucracies and professional litigants, who it seems will stop at nothing to achieve their end aim of preventing expansion - or even viable operation – of farming activities within Tasmania.

### 4. Are the definitions in the *Primary Industry Activities Protection Act 1995* sufficiently clear and do they cover all relevant activities?

In our view, the framing of the Act itself is fundamentally flawed. Until this is addressed, the fact that the definitions within the Act are neither clear nor effective is of little relevance.

One fundamental flaw underlying the Act is a presumption that agricultural activity is the same year in and year out. This is certainly not the case – and probably never has been so. Successful farmers must have the flexibility to react to rapidly changing circumstances. A second flawed assumption is that landholdings do not change hands, as the 'protection' afforded by the Act only extends only to activities which have some longevity. A further flaw results from changing community perceptions of farming, and the increasingly litigious modern society in which we live.

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This leaves the path wide open for challenges to what are normal farming operations, with little need for objective justification or even for opponents who would not be commonly seen as having grounds for standing to demonstrate a genuine interest.

The following specific comments are provided as indicative analysis only.

- Section 4 sets out the circumstances in which normal farming activities do not constitute a nuisance. These relate mainly to time periods. However, modern farming activities take place 24 hours per day, seven days per week, and 365 days per year. Often circumstances beyond the control of the farmer will derail even the best laid plans and activities will need to be carried out at what others may consider to be times that create nuisance. Allowing time constraints as a ground for objection will inevitably result in conflict.
- There is a requirement under section 4(d) that the activity is not being improperly or negligently carried out. There is no definition of “improperly or negligently” within the Act, which leads to the conclusion that this matter can only be properly decided by the courts.
- Section 4(e) goes on to state that “the only ground for claiming that the activity is a nuisance is that land use conditions in the locality of the area of land changed after the land had been in continuous use for primary industry for a period longer than one year.” This clause is at odds with the preceding paragraphs which appear to indicate to set out other grounds objection.
- Section 6 of the Act states that “nothing in this Act derogates from the operation or effect of any other Act”. A primary industry activity is then defined under the Act an activity which “does not contravene, or fail to comply with, an enactment of the State or Commonwealth or a council by-law”. This means that a farmer is subject to all other legislation relating to land or land use which might impinge on his or her ability to carry out primary production activities or even prevent the farmer from farming.

#### **5. How could the *Primary Industry Activities Protection Act 1995* be improved?**

The PIAP Act is outdated and has proven to be ineffective in meeting its stated objectives. However, it is our view that focussing on improving this Act in isolation from a wider overhaul of the overall planning regime in Tasmania would be pointless; and would not deliver better outcomes.

#### **6. Mandatory disclosure of neighbouring agricultural activities is not currently required under Tasmania’s land sales legislation. Would mandatory disclosure help prevent land use conflicts?**

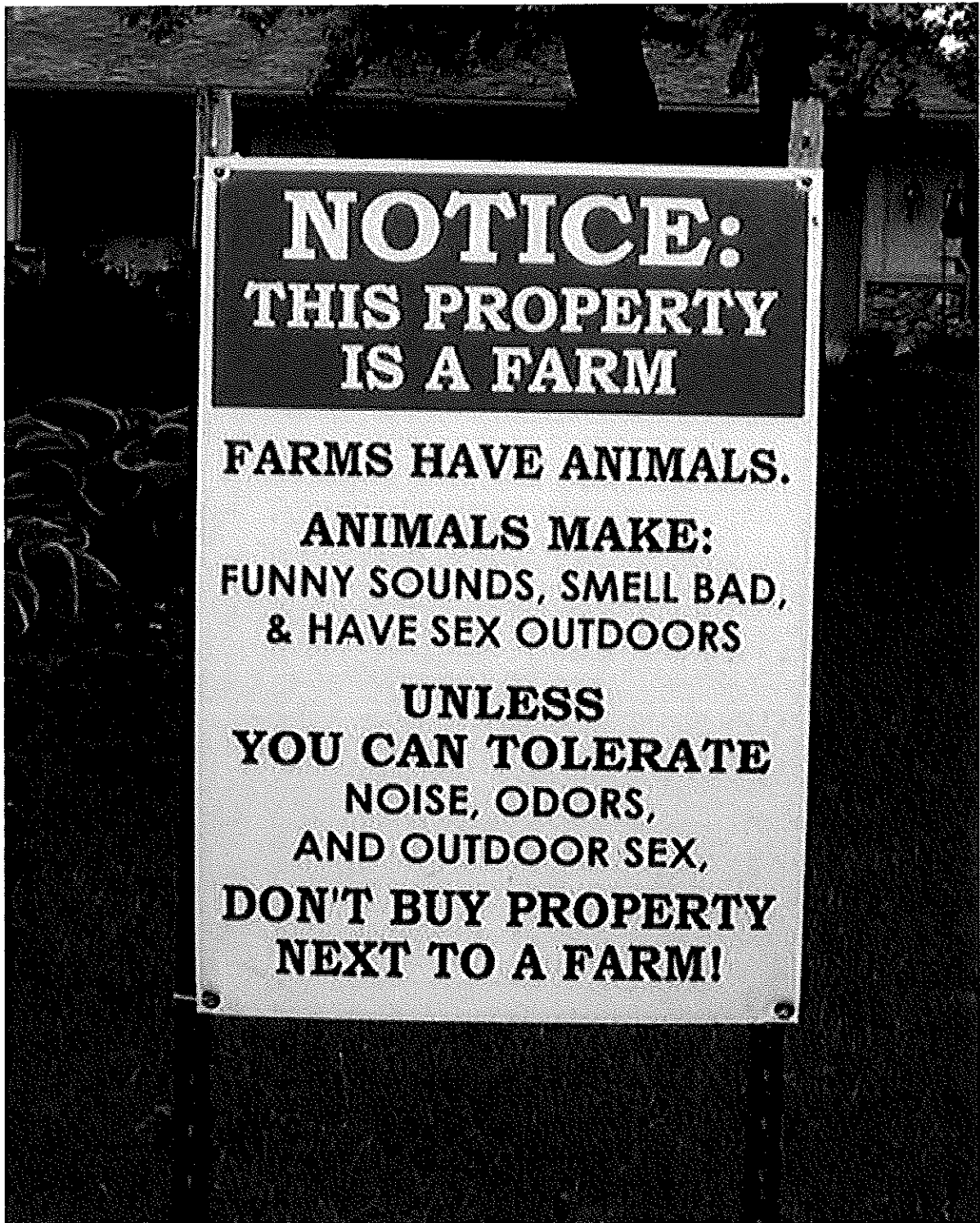
‘Buyer beware’ declarations of this type are not uncommon in other jurisdictions, including some states in Australia. This would be a welcome step. However, it could not be seen as a stand-alone measure and would need to be part of a larger suite of planning tools.

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**APPENDIX B: WHAT HAPPENS WHEN PLANNING FAILS**

*A landlocked poultry farm in a western Sydney urban growth area*









The primary contact for this submission is

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