



4 August 2014

The Project Team
Review of the *Primary Industry Activities Protection Act 1995*
Department of Primary Industries, Parks, Water and Environment
GPO Box 44
HOBART TAS 7001

Dear Project Team

REVIEW OF THE PRIMARY INDUSTRY PROTECTION ACT 1995

Thank you for the opportunity to make a submission to the review of the *Primary Industries Activities Protection Act 1995*.

Please note the following comments are provided as officer-level comments only, as they have not been endorsed by full Council.

In addressing your specific questions:

- 1. Are there any examples of innovative laws protecting primary industry activities that Tasmania can learn from?*

The Victorian (statewide) planning provisions provide an example of a mechanism where a state policy position can be promulgated into all planning schemes across a state. In Tasmania, the State planning scheme template and the few other statewide planning directives have made a start down this path.

It would appear possible that the intent of the *Primary Industry Activities Protection Act 1995* could be at least partly implemented through statewide planning scheme provisions. Indeed, as the Act currently only protects against complaints raised as a common law nuisance or an environmental nuisance under the *Environmental Management & Pollution Control Act 1993* (EMPCA) pertaining to noise only, it would appear necessary to expand protection if the objectives of the Act are to be pursued.

- 2. Are legal protection laws the appropriate mechanism to resolve land use conflicts?*

The *Primary Industry Activities Protection Act 1995* appears to be necessary to protect against complaints lodged under common law. However, most nuisance complaints in Tasmania would likely be lodged under EMPCA.

It would therefore appear necessary to expand farmers' protection to include all forms of environmental nuisance under EMPCA.

This will only deal with case by case issues, however, and a strategic land use planning approach is also recommended. Farmer-verses-lifestyler land use conflicts occur in two distinct situations:

- (i) On the fringe of urban areas, such as around the periphery of greater Hobart.
- (ii) In genuine farming districts, such as when an existing dwelling on a small title changes ownership.

In the first case, it is likely that land use conflict will only increase, as more lifestylers move into the area and residential and rural living zones expand. The solution in this case is strategic land use planning. The first iteration of the statutory Regional Land Use Strategies has now come to pass. In Southern Tasmania we now have a defined Urban Growth Boundary around greater Hobart. Ideally, in a second iteration of the Regional Land Use Strategies, the long term boundary between existing and future fringe rural living areas and productive agricultural districts would be similarly defined. This would form a second ring, further out. Planning scheme provisions (and an amended EMPCA) would then continue to afford high quality residential amenity within the boundary whilst allowing (responsible) farming activities to flourish unfettered outside. Furthermore, the design of rural living subdivisions up to the boundary would have to incorporate appropriate buffers.

It is important to note that the base rural zone in almost all current Tasmania planning schemes (and transposed as the Rural Resource zone in the new State Template schemes), have generally not been 'proactively' spatially applied. As well as applying to genuine rural land, these zones also apply to all land that did not fit well within any of the other zones available to the drafters of the various scheme at the time they were created. Around the periphery of greater Hobart, for example, the base rural zone in many schemes has been used as a 'holding zone', awaiting future urban or rural living expansion. Therefore, applying 'right to farm' laws simplistically to these base rural zones will lead to some unforeseen complications for some land.

In the second case, it is agreed that priority should be given to enabling (responsible) farming activities to continue unfettered.

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

Council is unaware of any situations in Southern Midlands where the Act has been used to protect farmers' rights. This is not to say there have been no such instances as such cases may not have come to Council's attention, being concerned with common law nuisance only.

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

If the Act is considered necessary into the future, it is suggested that it be coordinated with the *Land Use Planning & Approvals Act 1993* (and the new State Template planning schemes) and the *Environmental Management & Pollution Control Act 1994*. Consistent definitions would assist in a holistic approach to this issue across the various pieces of legislation that may impact farmers' rights to farm.

Also, section 3(2)(a)(i) could now refer directly to the two relevant State Template zones, the Rural Resource Zone and the Significant Agricultural Zone.

Finally, if the existing section 3(2)(a)(i) is to remain, it is noted that 'councils' do not zone land; planning authorities do. Furthermore, it is the Tasmanian Planning Commission (the state planning authority) which has the final say in regard to the zoning of land and often amends the draft zoning the local council (as the local planning authority) proposed.

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

Refer comments above.

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?*

Such a requirement would likely be inconsistently implemented, which would subsequently lead to many compliance issues.

If mandatory disclosure is established in Tasmania, the responsibility should sit with the vendor, not the local council.

If you would like to discuss this matter further, please contact me at Council's Kempton offices on 6259 3011, or by email on; dmackey@southernmidlands.tas.gov.au.

Yours faithfully

Damian Mackey
Manager Development & Environmental Services
SOUTHERN MIDLANDS COUNCIL