Productivity Commission Public Inquiry

Impacts of Native Vegetation and Biodiversity Regulation

Tasmanian Government Submission

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1. Introduction

The Tasmanian Government recognises that effective natural resource management, particularly on private land, requires a mix of both regulatory and cooperative, incentive based tools. The Tasmanian Government has been seeking to achieve this balance under the Resource Management and Planning System and forest practices system and, more recently, through the development of the Natural Resource Management Framework.

In September 2001, the Tasmanian Government released Tasmania *Together*, a 20-year social, economic and environmental plan based on broad community and stakeholder consultation. This forms an overarching framework for planning, budgeting and policy prioritisation for the Government and non-government sectors. Included in this strategy are 4 goals that are particularly relevant to this inquiry. These are:

- To value, protect and conserve our natural and cultural heritage;
- To value, protect and maintain our natural diversity;
- To ensure there is a balance between environmental protection and economic and social development; and
- To ensure our natural resources are managed in a sustainable way now and for future generations.

These goals are underpinned by 23 standards and 50 indicators. The independent Tasmania Together Progress Board reports progress against these indicators annually.

The following submission outlines the key mechanisms used by the Tasmanian Government to protect and maintain native vegetation values and biodiversity in Tasmania. It is hoped that this detail will assist the Commission in understanding the framework being pursued by the Tasmanian Government.

2. Policy Frameworks

2.1. Resource Management and Planning System

The Resource Management and Planning System (RMPS) was established in 1994 with the aim of achieving sustainable outcomes from the use and development of the State's natural and physical resources. Several pieces of legislation embody the aims of the RMPS. The *Land Use Planning and Approvals Act 1993* is the principal planning Act. Other significant legislation that supports the RMPS include:

- *Land Use Planning and Approvals Act 1993;*
- *Resource Planning and Development Commission Act 1997;*
- *Resource Management and Planning Appeal Tribunal Act 1993;*
- *State Policies and Projects Act 1993;*
- *Environmental Management and Pollution Control Act 1994;*
- *Threatened Species Protection Act 1995;*
- *Nature Conservation Act 2002;*

- *National Parks and Reserve Management Act 2002;*
- *Historic Cultural Heritage Act 1995;* and
- *Major Infrastructure Development Approvals Act 1999.*

The concept of sustainable development provides overall direction for the RMPS. The objectives of the RMPS are to:

- promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity;
- provide for the fair, orderly and sustainable use and development of air, land and water;
- encourage public involvement in resource management and planning;
- facilitate economic development in accordance with the objectives set out above; and
- promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.

In the objectives, "sustainable development" means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while:

- sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations;
- safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
- avoiding, remedying or mitigating any adverse effects of activities on the environment.

As can be seen by these objectives, decisions by local planning authorities and State Agencies taken within the RMPS on the use and development of resources need to take into account wider economic, social and environmental implications. In doing so, decisions are more concerned with how use or development occurs rather than what it is or even where it is located.

Fundamental to the question of how the use or development of resources is to occur are a number of important principles. These include:

Inter-generational equity: Resource use decisions should be made taking into account the needs of future generations. In short, the long-term rather than the short-term view prevails;

Conservation of biodiversity: This requires that we maintain species and genetic diversity;

Precautionary approach: Decisions should err on the side of caution where there is uncertainty surrounding the potential impact upon the environment;

Social equity: The private use or development of resources must consider the wider social costs;

Efficiency: Resources must be used efficiently; and

Community participation: The community should be involved in establishing the parameters for the use and development of resources.

There are several essential elements in ensuring the RMPS is applied effectively. These are:

1. **Strategic planning:** Strategic planning allows government, industry and the community to agree on common strategies for resource use and development, reducing the likelihood of conflict over individual developments. It also ensures that short-term decisions are consistent with long-term goals. This allows the needs of future generations to be taken into account when providing for the resource development needs of existing communities.
2. **Flexibility and currency:** The move towards a performance-based approach is consistent with achieving outcomes rather than adherence to inflexible prescriptive standards. This needs to be balanced against the need for such prescription to provide certainty for system users.
3. **Whole of government approach:** An integrated approach by the different sections and levels of government promotes the efficient management and planning of resources. This is also essential for the consolidation and co-ordination of planning approvals.
4. **Public participation:** Public participation allows the community to establish an agreed direction for the use and development of resources and the appropriate parameters to achieve it.
5. **Monitoring the state of the environment:** Decisions have to be made with as complete knowledge of the environment and its condition as possible. Monitoring of the environment will allow strategies, planning schemes and ultimately decisions to be adjusted in response to changes to, or new knowledge about the environment.

2.2. Natural Resource Management Framework

The Tasmanian Natural Resource Management Framework has been developed to provide the State with a systematic way of integrating natural resource management, to ensure consistency, efficiency and improved natural resource outcomes. Although currently in its infancy, it is expected that the Framework will become the strategic planning system by which the Tasmanian Government coordinates and integrates the activities of the wide range of entities that are involved in the management of natural resources in the State. The Framework is supported by the *Natural Resource Management Act 2002*.

The Framework starts from a broad definition of natural resource management as 'the management of all activities that use, develop and/or conserve our air, water, land, plants, animals and microorganisms, and the systems they form'.

The Framework does not replace existing policies and processes. In particular, the Tasmanian Resource Management and Planning System continues to provide the overarching legislative framework for natural resource management and for planning and development control. The Framework integrates the elements of this system and deals with those aspects of natural resource management that are not driven or delivered through legislative means.

Priorities

Activities and decisions under the Framework are guided by a set of priorities. The Tasmanian Natural Resource Management Council has recently confirmed the original set of natural resource management priorities. The priorities are divided into two groups:

- process priorities – capacity building; education / communication; and research; and
- natural resource priorities – water management; vegetation management (forest and non-forest); soil management; management of weeds, pests and diseases; and management of the coastal / marine environment.

A Tasmanian Natural Resource Management Council

A new element under the Framework is the Tasmanian Natural Resource Management Council, which provides advice to Government. The Council advises Government on a range of matters, including natural resource management priorities, the accreditation of Regional Strategies, the effectiveness of the implementation of these strategies, and the implementation and administration of funding programs. It also seeks to promote the natural resource management principles and establish effective communication mechanisms with regional bodies and among stakeholders.

Specifically, the Council advises the Government on:

- state-wide priorities for natural resource management, including funding priorities;
- appropriate accreditation criteria for regional natural resource management strategies;
- the accreditation of Regional Strategies, and the setting of appropriate standards and targets;
- the best way of delivering consistency in natural resource management, including across regional boundaries;
- the most effective means of building community capacity with regard to natural resource management;
- the efficiency and effectiveness, including performance monitoring against standards and targets, of the activities undertaken under Regional Strategies, on which the Council would receive annual reports;
- the implementation and administration of funding programs; and
- matters referred to the Council by Government.

The Council is made up of up to 16 members, appointed by the Government. The membership is to provide a balanced representation of the relevant stakeholders, including each of the Regional Natural Resource Management Committees, the Aboriginal community, industry and land managers, conservation interests, State and local government, and community groups.

The composition of the Tasmanian Natural Resource Management Council allows participation by a range of relevant stakeholders, while not resulting in a body too unwieldy to work efficiently. Council members need to possess a demonstrated knowledge and understanding of natural resource management issues.

Three Regions and the Regional Natural Resource Management Committees

The Framework is intended to link, and to help coordinate, natural resource management at all levels in the State. It is based on recognition that some formal link is required between the State and the local levels. The Framework also recognises that regional natural resource management structures have to be linked to ensure statewide planning, priority setting and coordination.

A key issue in the development of the Framework was to establish for Tasmania the regional scale at which the integration of natural resource management can be carried out most efficiently – a scale that allows planning, priority setting and coordination, without losing touch with local communities and issues. Organisation only at the State level is generally considered too far removed from local communities, but local government and catchments are considered too small to provide maximum efficiency.

The advantages of management at a regional level have been recognised in the moves by local government to set up three regional bodies (the Cradle Coast Authority in the North-West, *region north!* in the North and the Southern Tasmanian Councils). The Framework, therefore, aligns with this approach and establishes NRM regions that share the boundaries of these three local government regional associations. Each region has a NRM Regional Committee.

The Committees seek to link local and State natural resource management activities, and provide for integration and coordination within their regions. Although Regional NRM Committees have no regulatory role, they will identify regional priorities, prepare and monitor Regional Natural Resource Management Strategies, and promote natural resource management principles.

The Minister "declares" the Regional Committees, though membership is determined through a process driven by the regional communities. Before declaring them, the Minister must be satisfied that Regional Committees include representation from the following:

- Aboriginal community interests;
- State and local governments;
- one or more public land managers;
- community interests;
- conservation interests; and
- industries in the region.

Committee membership must also provide a balance of geographical areas and of natural resource management interests in the region and comprises equal numbers of males and females as far as practicable. The Minister appoints one of the members as Chair.

Each Regional Committee will:

- identify priority natural resource management issues for the region;
- prepare a natural resource management strategy for the region, including appropriate standards and targets, and ensure community input into the development of the strategy;

- seek, manage and allocate regional funds in accordance with the Regional Strategy;
- coordinate the region's participation in natural resource management programs;
- monitor and evaluate the implementation of the region's natural resource management strategy, report on it annually to the Tasmanian Natural Resource Management Council, and review it at regular intervals;
- promote the natural resource management principles, and encourage community ownership of the Regional Strategy through a regional communications plan;
- develop and implement, in liaison with State agencies, a process to ensure appropriate education and training in natural resource management for people in the region, including through extension services; and
- integrate the natural resource management and planning activities of the region and foster linkages between local councils, State agencies, industry and community groups.

There will be no formal link between Regional Strategies and local government planning schemes or other planning instruments. It is expected, however, that the participation of Local Government representatives on the Regional Committees and their involvement in the development of regional strategies will influence Local Government's direction in preparing and amending planning schemes. The planning process undertaken by their constituent municipalities may also influence the Regional Committee. The effectiveness of this approach will be reviewed as part of the statutory review of the Framework.

Regional Strategies

The Natural Resource Management Regional Committees are responsible for developing Regional Strategies. Regional Strategies will need to be accredited and to include an appropriate structure of standards and targets. Regional Committees have 12 months from the commencement of the *Natural Resource Management Act 2002* to present draft regional strategies for accreditation.

2.3. Native Vegetation Policy

In February 2001, the Tasmanian Government endorsed a broad strategy for the management of native vegetation that placed a strong emphasis on facilitating conservation on private land through incentives, conservation plans, education and awareness whilst strengthening some of the policy and statutory levers. The cooperative approaches will complement existing and new statutory measures for maintaining native vegetation values in the State.

Elements of the Government's Native Vegetation Policy included:

- Amending of the *Forest Practices Act 1985* to include the requirement to assess and approve non-commercial tree clearing and to improve the definition of vulnerable land (see Section 4.4);
- Reviewing of the Permanent Forest Estate Policy (see Section 4.4);

- Maintaining the Tasmanian vegetation mapping database (TASVEG) to enable the continued analysis of data for non-forest vegetation;
- Working to identify non-forest vegetation conservation priorities; and
- Improving conservation on private land through incentives, conservation plans and education and awareness (including through an expansion of property management planning, see Section 3.2).

A key to sustainable management of native vegetation is the development of a sound understanding of the distribution of native vegetation communities in Tasmania. To this end, the Tasmanian Government continues to support the development of an accurate vegetation map of the State. TASVEG is currently focusing on mapping non-forest vegetation communities to complement the forest mapping completed during the development of the Tasmanian Regional Forest Agreement.

Native Forest Vegetation

The protection of native forest vegetation in Tasmania is secured through the State's Comprehensive, Adequate and Representative (CAR) Reserve System. This reserve system comprises formal reserves on public land and a voluntary reserve program for private land (Private Forest Reserve System). In addition to the CAR Reserve System, the Tasmanian Government has also agreed to general targets for the maintenance of native forest vegetation in Tasmania under the Permanent Forest Estate Policy (see section 4.4).

The CAR Reserve System was established under the Tasmanian Regional Forest Agreement to ensure the long-term conservation and protection of the values defined by the JANIS Reserve Criteria[1]. It includes formal reserves (those dedicated by the Tasmanian Parliament), informal reserves managed to protect the CAR values and any other areas protected by management prescription under the Forest Practices Code or in Forest Management Plans. The CAR Reserve System also includes reserves on private land, which are reserved with the agreement of the landholder (see section 3.1).

Native Non-Forest Vegetation

The recently signed bilateral agreement for the extension of the Natural Heritage Trust reflected the commitment of the Tasmanian Government to protected threatened non-forest vegetation communities. Under this agreement, the Government committed to:

- prevent the clearance and conversion of rare, vulnerable and endangered non-forest vegetation communities on public land, except in exceptional circumstances where the activity will not substantially detract from the conservation of the non-forest vegetation communities or conservation values within the immediate area;

[1] Includes a set of criteria based originally on recommendations of the intergovernmental Technical Working Group on Reserve Criteria established under JANIS (the Joint Australian and New Zealand Environment and Conservation Council/ Ministerial Council on Forestry, Fisheries and Agriculture National Forest Policy Statement Implementation Subcommittee) as outlined in the '*Nationally Agreed Criteria for the Establishment of a Comprehensive, Adequate and Representative System for Forests in Australia*'.

- prevent the clearance and conversion of rare, vulnerable and endangered non-forest vegetation communities associated with forestry operations through amendments to the Permanent Forest Estate Policy;
- support Local Government in giving adequate consideration to the conservation of non-forest vegetation communities through the provision of information identifying the conservation status of non-forest vegetation communities, together with new information products and specific advice on rare, vulnerable and endangered non-forest vegetation communities;
- work with Local Government to develop and implement suitable planning scheme provisions to conserve rare, vulnerable and endangered non-forest vegetation, including through capacity building within Local Government to deal with vegetation assessments and advising on such assessments; and
- pursue, within 30 months of the signing of the agreement, a Planning Directive under the *Land Use Planning and Approvals Act 1993* to require any Council that has not made provision for its planning scheme to prevent the clearance and conversion of rare, vulnerable and endangered non-forest vegetation communities, to implement a standard set of planning provisions.

3. Non Legislative Measures

3.1. Private Forest Reserves Program

The Regional Forest Agreement (RFA) establishes the Comprehensive, Adequate and Representative (CAR) Reserve System for Tasmania's forests. Whilst forest communities have been reserved on public land as far as possible, the RFA also recognises that private land will be required to complete the reserve system, with CAR values protected "under secure management arrangement by agreement with private landowners".

The objective of the Private Forest Reserves Program (PFRP) is "to protect CAR values on private land by the voluntary participation of private landowners in the CAR Reserve System" in accordance with the principles set out in Attachment 8 to the RFA (and as provided at Attachment 1 to this submission).

The program uses a combination of independent scientific assessment to rank conservation priorities, financial incentive payments for landowners, perpetually binding legal instruments on land title, and voluntary participation by landowners, to conserve Tasmania's most significant native forest ecosystems on private land.

Thirty million dollars was made available under the Natural Heritage Trust and a special Commonwealth grant to implement the program. The initial target for the PFRP was to secure long-term conservation of about 100,000 hectares of targeted forest ecosystems on private land. Current Program funds will allow the Program to continue for the next 2 to 4 years.

Scientific rigour and objectivity are ensured through an assessment process that involves specialist botanists and ecologists, and the independent Comprehensive, Adequate and Representative Scientific Advisory Group (CARSAG). Input from key stakeholders, transparency, accountability and strategic overview are key success factors for the Program that are facilitated by an advisory committee comprising

representatives from State and Commonwealth Governments and key community and industry stakeholders.

In recent years, an increased emphasis has been given to targeting forests on private land of the highest priority for conservation. Negotiators work as part of small regional teams to contact and encourage landowners to establish private forest reserves on their land, or at least to be aware of the conservation significance of their land. The most valuable promotion of the program continues to be through involvement of respected landowners.

Interest from Municipal Councils in offering annual rate rebates for land under perpetual conservation covenants has increased significantly in recent years with ten Councils adopting the approach. A number of other Councils are still considering the introduction of such a scheme.

During 2002-03, 164 forested properties were assessed, bringing the progressive number to 872. Forty three (43) conservation covenants were recorded on land titles during the year and covered a total area of 7,287 ha, bringing the total to 108 covenants over an area of 18,204 ha. Four properties were purchased (621 ha), bringing the number of properties purchased to 18 and the total area purchased to 4,991 ha.

The total area of targeted forests protected by the Program to date, by purchase, covenants and management agreement on 128 properties is 23,673 ha - a 50 per cent increase in secured areas from 15,765 ha on 1 July 2002. The average area of native forest protected per property was 185 ha.

The Private Forest Reserves Program demonstrates that conservation of biodiversity can be integrated with sustainable agriculture across rural landscapes through effective partnerships with landowners, which are entered into voluntarily, and by providing financial incentives related to conservation and market values of land.

The PFRP remains unique in Australia in providing financial incentives for binding perpetual conservation agreements, to protect identified areas of high significance on private land. This approach is likely to be successful in other situations and places, wherever there is a need to ensure long-term protection of identified conservation values on private land for the public good, develop effective partnerships with landowners through constructive collaboration, and integrate biodiversity conservation with sustainable agriculture.

3.2. Property Management Planning

The Tasmanian Government’s view is that the most effective conservation outcomes on private land are generated through the active engagement and cooperation of the landholder. Often the differences between a positive conservation outcome and a negative result for the environment are relatively subtle differences in land management practices, which cannot be effectively regulated across the board.

A well informed landholder operating to a considered plan for the management of the property can achieve conservation outcomes in a climate which also provides some security for the landholder in the area of production practices which are appropriate and permitted for that land. A specific example of this opportunity is the State's commitment to seek to enter into vegetation management agreements with landholders to protect priority vegetation conservation values.

The Government has committed to protect rare, vulnerable and endangered forest and non-forest vegetation. While regulation through the development approval process will be a vital component of this protection for non-forest vegetation, such regulatory measures cannot effectively deal with losses in vegetation which occur through changes in stocking rates, seasonal use patterns, cultivation practices or fertilizer application. Vegetation management agreements will be negotiated with landholders, which identify and map the native vegetation assets on a property and describe how those assets will be managed to provide both sound conservation and production outcomes. Those agreements will give a landholder certainty over how those assets can be used over a considerable planning horizon.

The Commonwealth has agreed to provide up to $1.75 million from the Natural Heritage Trust program to assist the State in giving effect to this protection of non-forest vegetation and this will assist us in establishing vegetation management agreements over priority properties.

While a vegetation management agreement is a specific example of property management planning designed to achieve particular ends, it forms part of a broader approach. The Department of Primary Industries, Water and Environment seeks to integrate such initiatives into a coherent property planning approach which applies at the property level but is informed by needs on a broader catchment scale. Such an integrated property plan would pull together plans for management of such issues as chemical use, integrated pest management, wildlife, soil, water use, nutrient budgets and a host of production issues.

The aim is to increase the efficiency and certainty of the regulatory environment by ensuring that property planning is consistent with the needs of regulators and can provide the basis for more efficient and predictable approvals (eg. wildlife crop protection authorities).

We also recognise that the market place is increasingly demanding that production occurs under conditions of sound environmental management. The environmental management system built through this integrated property planning approach will be structured in such a way as to provide the maximum possible consistency with the relevant ecolabel requirements. For example, the aim would be to ensure that the various plan components would satisfy the various elements of the Eurepgap protocols[2].

It is expected that the value of such an approach, which meets the needs of regulators, landholders and markets, will be recognised through Natural Resource Management

[2] Eurepgap stands for **Eu**ropean **Re**tailers, **P**roducers - **G**ood **A**gricultural **P**ractice, and is an accreditation system run under the auspices of the European common market enabling farmers to have their practices accredited as being best practice and environmentally sustainable.

Regional Strategies and that regional investment plans will provide for assistance to landholders to undertake this integrated planning and implement property plans.

4. Legislative Measures

4.1. Land Use Planning and Approvals Act 1993

The *Land Use Planning and Approvals Act 1993* (LUPAA) is the central legislation underpinning the Resource Management and Planning System (RMPS). Broadly it provides for the making and amendment of planning schemes, the assessment of planning directives, development control and enforcement, agreements between planning authorities and landowners and appeals into specific development control matters.

The Resource Planning and Development Commission (RPDC), established under the *Resource Planning and Development Commission Act 1997*, performs a number of functions under LUPAA. These include:

- the certification and approval of planning schemes;
- the approval of amendments to planning schemes;
- the assessment of planning directives;
- the conduct of hearings on representations regarding planning schemes and amendments to planning schemes; and
- the approval of special planning orders.

Under LUPAA, municipal councils are designated as planning authorities. Their role is:

- the preparation and administration of planning schemes;
- the certification of amendments to planning schemes;
- the assessment and approval of applications for planning permits for the use and development of land; and
- the enforcement of planning scheme provisions and permit conditions.

Planning controls determine what uses or developments can be undertaken within a specified area. These controls are applied through:

- planning schemes;
- planning directives; and
- special planning orders.

Planning Schemes

Planning schemes are regulatory instruments that set out the requirements that apply to new use and development. Planning schemes do not affect existing land use and development. Planning schemes are important to the delivery of sustainable development at the local level.

Planning Directives

The purpose of planning directives is to ensure planning authorities apply consistent approaches to certain planning issues. Planning directives may cover:

- land use issues requiring consistency for all municipal areas;
- land use issues unique to one municipal area or only some municipal areas;
- procedural matters arising from the operation of LUPAA or a State Policy;
- the application of a State Policy; and
- any other matter the Minister considers appropriate.

A planning directive may be drafted by any person but can only be issued upon the approval of the Minister and after assessment by the RPDC – an independent Commission established to pursue the RMPS objectives.

Special Planning Orders

Special planning orders are used to override provisions of an existing planning scheme or where there are no planning controls in place. A special planning order may be made by the RPDC, or by the RPDC at the request of a planning authority, where:

- there are contradictions in, or inconsistencies between, the provisions of a planning scheme; or
- it is necessary to introduce planning provisions for an area where a planning scheme is not in force
- or will cease to operate; or
- there would be an unacceptable delay in using the planning scheme or amendment preparation and approval powers.

The RPDC cannot make a special planning order unless it considers that it is in the public interest to do so.

Further information regarding the operation of the *Land Use Planning and Approvals Act 1993* can be found at www.rpdc.tas.gov.au.

4.2. State Policies and Projects Act 1993

This Act provides for the making of State Policies in relation to sustainable development matters of statewide strategic significance. These State Policies are required to be consistent with the objectives of the Resource Management and Planning System. Further information regarding the *State Policies and Projects Act 1993* can be found at www.rpdc.tas.gov.au/state_policies/stp_docs/state_policies.htm.

The Act provides for the policies to override the provisions of planning schemes or planning orders.

A State Policy may contain matters relating to one or more of the following:

- sustainable development of natural and physical resources;
- land use planning;

- land management;
- environmental management;
- environment protection; and
- any other matter that may be prescribed.

State Policies currently in existence include:

- The Tasmanian State Coastal Policy;
- The State Policy on the Protection of Agricultural Land; and
- The State Policy on Water Quality Management.

In addition, National Environmental Protection Measures (NEPMs) are deemed to be State Policies under the *State Policies and Projects Act, 1993.* The current NEPMs are not directly related to the regulation of native vegetation or biodiversity.

The *State Policies and Projects Act, 1993* also provides for the declaration of Projects of State Significance after approval by both Houses of the Tasmanian Parliament. The Act provides a process for the integrated assessment of a Project of State Significance and the making of an order by the Governor approving the project. The order can grant a licence or other approval required under another Act and is not subject to appeal.

4.3. Environmental Management and Pollution Control Act 1994

The objective of the *Environmental Management and Pollution Control Act 1994* (EMPCA) is to provide for the management of the environment and the control of pollution in the State. The Act:

- provides for the control of all activities that might lead to environmental harm;
- encourages best practice environmental management by industry, planning authorities and State agencies; and
- facilitates a coordinated approach by planning authorities for planning assessment and environmental management.

These objectives are integrated into planning processes and are taken into consideration by planning authorities when carrying out environmental assessment of new planning schemes, amendments to existing planning schemes and when assessing and approving applications for planning permits.

The Act also provides for:

- integrated Environmental Impact Assessments by a planning authority and the Board of Environmental Management and Pollution Control, for level 2 planning applications; and when a planning application is not necessary: environmental impact assessments by the Board;
- environment protection notices;
- environmental auditing and monitoring environmental agreements;
- environmental improvement programs;
- enforcement measures;

- common appeal process; and
- the charging of fees.

A Board of Environmental Management and Pollution Control (BEMPC) is established under the Act. The Board performs a number of functions, including:

- protecting the environment of Tasmania;
- furthering the objectives of this Act;
- ensuring the prevention or control of any act or omission that causes, or is capable of causing, pollution;
- coordinating all activities, whether Governmental or otherwise, as are necessary to manage the use of, protect, restore or improve the environment of Tasmania; and
- ensuring that valuation, pricing and incentive mechanisms are considered in policy making and programme implementation in environmental issues.

The BEMPC undertakes the assessment of level 2 activities and is involved in environmental impact assessments, environmental agreements, environmental audits, environment protection notices, environmental infringement notices and environmental improvement programmes.

The Act defines and deals with three main classifications of activities that may cause environmental harm:

- **Level 1:** An activity/development/use which requires a permit under the *Land Use Planning and Approvals Act 1993* and which may cause environmental harm (but does not include a level 2 or 3 activity);
- **Level 2:** An activity listed in Schedule 2 of the Act (the activity often has a stated minimum production threshold). Most level 2 activities require a permit under the *Land Use Planning and Approvals Act 1993,* although there are some that do not.
- **Level 3:** An activity declared to be a project of State significance under the *State Policies and Projects Act 1993.*

New proposals are assessed in accordance with environmental impact assessment principles. The assessment and decision-making procedure for these proposed activities is primarily the responsibility of either the planning authority and/or the BEMPC, depending on the level of classification. The process for undertaking an assessment is outlined below.

Assessment of activities

Activities that may cause environmental harm must be assessed under the Act. The approval and assessment of these activities is integrated into the planning process established by the *Land Use Planning and Approvals Act 1993* and the *State Policies and Projects Act 1993.* If a joint assessment is required, a planning authority assesses the planning aspects of the application and the environmental aspects are assessed by the BEMPC.

Level 1 activities

Planning Authorities, as part of their permit approvals, assess the environmental impacts of level 1 activities and assessment at a State Government level is usually not required.

If significant environmental harm might occur, however, the State Government's Director of Environmental Management may nevertheless 'call in' the project and refer it to the BEMPC for assessment.

In these cases, the planning authority is obliged to include in any permit it issues conditions set by the BEMPC, which has the authority to direct a planning authority to grant a permit with or without conditions, or not to grant a permit. Planning authorities may include planning conditions in the permit.

Level 2 activities

Activities that are included on Schedule 2 of EMPCA are 'level 2' activities, and must be subject to a formal Environmental Impact Assessment (EIA), in accordance with s.74 of the Act, by the BEMPC.

If a planning authority receives a development application that deals with a level 2 activity, the planning authority must refer it to the BEMPC for assessment. The BEMPC has the authority to direct a planning authority to include specified conditions on any permit it may grant, and it also has the authority to direct the planning authority to refuse the permit. A planning authority may include planning conditions in the permit.

There are some level 2 activities for which a permit from a planning authority is not required. On this rare occurrence, the onus is on the developer to refer the case to the BEMPC directly.

Level 3 activities

These activities relate to projects of State significance. These are assessed according to the processes outlined in the *State Policies and Projects Act 1993.*

Other activities

There are certain other activities which may be environmentally relevant (other than a level 1, 2, or 3 activity) which do not require a permit under LUPAA. Where the Director of Environmental Management decides that it is in the public interest to do so, the Director can cause such a proposed activity to be referred to the BEMPC. Examples of such developments include, but are not limited to:

- major roads or railways;
- large marinas;
- wilderness resorts and other tourist developments in parks or reserves;
- large dams; and
- communication installations.

Environment Protection Notices (EPNs)

An Environment Protection Notice (EPN) may be issued by:

- the Board of Environmental Management and Pollution Control for activities that may cause environmental harm; and
- planning authorities for level 1 activities and environmental nuisances.

EPNs place obligations on the person on whom they are served, with the objective of avoiding or remedying environmental harm. A notice has effect as a binding contract on the parties of the agreement.

An EPN may be also used to vary environmental conditions of an existing planning permit.

There is a right of appeal against both the issue of an EPN and the requirements contained in the EPN.

Environmental agreements

The BEMPC, on its own initiative, or at the request of another person:

- may enter into an environmental agreement with an operator of premises in respect of those premises;
- may approve an agreement entered into between persons as an environmental agreement; and
- may prepare an environmental agreement to be entered into between parties.

Environmental agreements may be made in respect of individual operations, premises, areas or regions and may apply to industry or activity groups. An agreement must specify the management, investment and monitoring functions which the parties to the agreement consider necessary to ensure environmental performance beyond that required to ensure compliance with the Act.

An agreement must not require or allow anything to be done which would contravene a planning scheme, special planning order or a permit.

An agreement remains in force for a maximum period of 5 years from the date of its commencement.

Civil enforcement orders

Where a person is engaging, or is proposing to engage, in conduct in contravention of EMPCA, or has refused or failed or is refusing or failing to take a required action, or has caused environmental harm, the Director, a planning authority, or a person who has, in the opinion of the Resource Management and Planning Appeals Tribunal (RMPAT), a proper interest in the subject matter may apply to the RMPAT for a civil enforcement order. The conditions attached to an order may be appealed and failure to comply with an order is an offence.

4.4. Threatened Species Protection Act 1995

The *Threatened Species Protection Act 1995* provides special protection and management measures for species of plants and animals, which are threatened with extinction. 'Threatened' includes those species that are classified under international convention as 'rare, vulnerable or endangered'.

The Act provides a strategic framework for the conservation of threatened species based on public education, planning and preventive management. It provides for Tasmanian threatened species strategies and community education programs together with a systematic approach to the identification of, and planning and management for the protection of, threatened species. It relies heavily on achieving voluntary conservation through incentives, education and direct involvement in planning.

Specifically the legislation provides for a scientific determination of the species which are to be included in the three schedules of rare, vulnerable and endangered species. Any person may nominate a species for inclusion on the lists, or for species to be removed from the lists. The Minister, following advice from scientific advisory committees makes final determinations.

The legislation provides for the preparation of a listing statement on those species included in the schedules. These are summaries of the current knowledge on each species and include such details as description, population levels, distribution, known threats, management undertaken and management required.

Following the preparation of listing statements, a number of steps may be taken. A species recovery plan or threat abatement plan may be prepared which detail strategies for the conservation of a species or control of a particular threat which may jeopardise the survival of several species.

It provides for the preparation of a management plan for a property or a particular area of land and an agreement between government and landowner/landholder over its future management so as not to disadvantage threatened species.

A key feature of this Act is public participation, which is seen as an essential prerequisite to effective community involvement in the protection of threatened species. Public participation is provided for in the preparation of the threatened species strategy through community education programs, the listing process and the preparation of recovery plans and threat abatement plans.

The Act provides for the imposition of interim protection orders - stop-work orders - by the Minister. These apply to critical habitats of listed species where action being taken is likely to threaten the survival of a species through habitat destruction and where agreement with the landholder has not been reached. These interim protection orders allow time for negotiation of mutually acceptable outcomes with private landholders.

The Act also prescribes offences for the deliberate and wilful destruction of threatened species.

4.5. Forest Practices Act 1985

Good forest management entails protection of natural and cultural values during forest operations, and proper reforestation where areas are to be reforested. The *Forest Practices Act 1985* was passed to ensure that forest operations are conducted in an environmentally acceptable manner on public and private forest lands. The Act forms part of a broader legislative and policy framework that provides the basis for sustainable forest management in Tasmania.

The statutory objective of the forest practices system is to:

> *"achieve sustainable management of Crown and private forests with due care for the environment while delivering, in a way that is as far as possible self-funding -*
> *(a) an emphasis on self-regulation; and*
> *(b) planning before forest operations; and*
> *(c) delegated and decentralized approvals for forest practices plans and other forest practices matters; and*
> *(d) a forest practices code which provides practical standards for forest management, timber harvesting and other forest operations; and*
> *(e) an emphasis on consultation and education; and*
> *(f) provision for the rehabilitation of land in cases where the forest practices code is contravened; and*
> *(g) an independent appeal process; and*
> *(h) through the declaration of private timber reserves - a means by which private land holders are able to ensure the security of their forest resources".*

The *Forest Practices Act 1985* provides for the administration of the forest practices system through the Forest Practices Board. The statutory objective of the Board is to:

> *"act in all matters in a manner that:*
> *a) best advances the objective of the State's forest practices system; and*
> *b) fosters a co-operative approach toward policy development and management in forest practices matters.*

The Act also provides for a Forest Practices Advisory Council to provide expert advice to the Board and to foster communication and cooperation among stakeholders. Various stakeholders with expertise in forest management on public and private land, forest harvesting, forest conservation and Tasmania's resource management and planning system are represented on the Council.

The Government recently announced its intention to legislate to make the Forest Practices Board more independent and more skills based. The new Board will also - include an Executive Board Member position for the Chief Forest Practices Officer.

The Board appoints Forest Practices Officers who are responsible for planning, monitoring and certifying that Forest Practices Plans are prepared and implemented in accordance with the Forest Practices Code and any instructions issued by the Board. Forest Practices Officers are also responsible for taking corrective action and enforcing the Act as necessary to ensure compliance in operations under their control. Specialists are employed by the Board to conduct research and provide practical

management advice to Forest Practices Officers on the conservation of natural and cultural values.

Forest operations are covered by Forest Practices Plans that are prepared in accordance with the Forest Practices Code. The Forest Practices Regulations provide exemptions for small-scale operations. The Act also contains compliance requirements in relation to monitoring and reporting upon Plans, the Code and other provisions of the Act. The Forest Practices Board conducts independent audits of compliance, and the results are publicly reported in the Board's Annual Report to Parliament. The Board is also required to take action with respect to offences under the Act.

The Forest Practices Code

The *Forest Practices Act 1985* provides that the Forest Practices Code shall prescribe the manner in which forest practices are to be conducted so as to provide reasonable protection to the environment. The Forest Practices Board issues the Code, after extensive consultation and public comment.

The Code provides a practical set of guidelines and standards for the protection of environmental values during forest operations, in particular:

- soils;
- water quality and flow;
- geomorphology;
- flora, fauna, genetic resources;
- visual landscape; and
- cultural heritage.

The Code does not directly deal with utilisation standards or occupational health and safety, as these matters are addressed within other legislative and policy frameworks. Manuals and technical instructions support the Code. The Forest Practices Board endorses these from time to time after consultation with the Forest Practices Advisory Council. Forest Practices Officers will use these documents and follow instructions issued by the Board.

The Code contains policies and practices that have been developed as a result of ongoing research and practical experience. Research and innovation by landowners, contractors and the forest industry is encouraged. The Code is kept under regular review and the results of research, field experience and public input are used to make progressive improvements so that environmentally sound, socially responsible and economically acceptable production forestry can be maintained.

The first Forest Practices Code became operational in November 1987, and was extensively reviewed and revised in 1993. The latest version takes into account the results of experience, research, independent reviews and submissions received from the general public, landowners, scientists, unions, contractors, conservationists, and land and resource managers from industry and government.

Duty of Care

An important aspect of the Forest Practices Code is that it defines the duty of care of landowners with regard to the forest practices system. Specifically, the Forest Practice Code provides that sustainable management of natural and cultural values within production forests under the forest practices system will be determined in accordance with and range of State legislative and policy instruments and:

"the duty of care of landowners under the provisions of the Code, which is defined as the fundamental contribution of the landowner to the conservation of natural and cultural values that are deemed to be significant under the forest practices system. The landowners' duty of care includes:

- *all measures that are necessary to protect soil and water values as detailed in the Code;*
- *the reservation of other significant natural and cultural values. This will be at a level of up to 5% of the existing and proposed forest on the property for areas totally excluded from operations. In circumstances where the partial harvesting of a reserve area is compatible with the protection of the values, the level will be up to 10%. The conservation of values beyond the duty of care is deemed to be for the community benefit and should be achieved on a voluntary basis or through compensation mechanisms where available."*

Further information regarding the Tasmanian Forest Practices Code and forest practice system is outlined in *Building partnerships – Tasmania's approach to sustainable forest management* (Wilkinson, 2001) and *Codes of forest practices as regulatory tools for sustainable forest management* (Wilkinson, 1999), which are available from http://www.fpb.tas.gov.au/.

Permanent Forest Estate Policy

The Permanent Forest Estate Policy is a central policy document for forest conservation, management and use. As part of the RFA, the State Government agreed to adopt a broad policy framework to maintain an extensive and permanent native forest estate and to maintain the sustainability of the total forest estate. This 'permanent forest estate' comprises areas of native forest managed on a sustainable basis both within formal reserves and within multiple-use forests across public and private land.

The Permanent Forest Estate Policy is implemented through the Forest Practices System in that the Forest Practices Code provides that "the sustainable management of natural and cultural values within production forests under the forest practices system will be determined in accordance with …the policy for maintaining a Permanent Forest Estate".

The Forest Practices Board has, in accordance with the above provision of the Code, proactively implemented the Permanent Forest Estate Policy through its consideration and certification of Forest Practices Plans and Private Timber Reserve applications. This has included placing a moratorium on the further conversion of certain forest types within some bioregions. The Board has also taken action to implement those elements of the Permanent Forest Estate Policy that the Government has recently agreed to change as part of the Bilateral Agreement for the Natural Heritage Trust Extension.

In addition to implementing the Policy, the *Forest Practices Act 1985* requires the Board to monitor and report on timber harvesting, clearing of trees and reforestation activity in relation to maintenance of a Permanent Forest Estate. The Board has undertaken this responsibility since 1999-2000 with the outcomes being published in the Board's annual report.

The Permanent Forest Estate Policy is currently under review. As part of negotiations with the Commonwealth Government for the extension of the Natural Heritage Trust, however, the Tasmanian Government agreed to:

- prevent the clearance and conversion of all rare, vulnerable and endangered *forest communities* on private and public land, subject to the exercise of discretion by the Forest Practices Board to approve conversion of these communities in exceptional circumstances where the conversion will not substantially detract from the conservation of a community or conservation values within the immediate area;
- prevent the clearance and conversion of rare, vulnerable and endangered *non-forest vegetation communities* associated with forestry operations, except in exceptional circumstances where the conversion will not substantially detract from the conservation of a community or conservation values within the immediate area;
- maintain at least 95% of the 1996 native forest estate that is currently on *public land*; and
- amend the *Forest Practices Act 1985* to require the Forest Practices Board to implement the Permanent Forest Estate Policy in certifying Forest Practices Plans.

4.6. Nature Conservation Act 2002

The former *National Parks and Wildlife Act 1970* was split into the *Nature Conservation Act 2002* and the *National Parks and Reserves Management Act 2002* to reflect a change in administrative responsibilities.

The *Nature Conservation Act 2002* provides for reserve creation, wildlife management, covenanting of private land and enforcement activities. It is set up to be part of the State's Resource Management and Planning System and to further the objectives of that system.

The Act provides for the creation, alteration and revocation of reserves in a range of classes that are determined in accord with specific criteria relating to values and purposes of reservation. The classes of reserve are:

- National Park
- Nature Reserve
- State Reserve
- Game Reserve
- Historic Site

- Conservation Area
- Nature Recreation Area
- Regional Reserve
- Private Nature Reserve
- Private Sanctuary

In addition the Act provides for the Minister to be able to enter into binding covenants on title or management agreements with private landowners to protect conservation values. The conservation covenants travel with the title irrespective of changes of ownership and can only be altered by agreement of both parties.

The Act provides for the regulation and management of the State's flora and fauna and for control over the introduction of certain species. It further provides for enforcement activities and for the serving of infringement notices to assist in enforcement.

4.7. National Parks and Reserves Management Act 2002

The *National Parks and Reserves Management Act 2002* (NPRMA) is the main legislation governing management of reserves proclaimed under the *Nature Conservation Act 2002* (NCA) in Tasmania. The NPRMA and NCA were formed following the split of the *National Parks and Wildlife Act 1970.* The NCA provides for formal proclamation of 10 classes of reserve and identifies values and purposes for each of the classes. The NPRMA complements the NCA by defining management objectives for each class of reserve.

The Act provides for appointment by the Governor of the Director of National Parks and Wildlife and defines the Director's functions to include acting as managing authority under the Act; reviewing the setting aside of land for conservation; research and educational activities on the conservation of the natural diversity of the State; providing information to advisory committees; preparing and reviewing management plans for reserves; enforcing the regulations; and carrying out functions in relation to land subject to a conservation covenant under the NCA. Arrangements may also be made to further the objectives of the NCA. The Act provides for the appointment of rangers and establishes and provides for the operation of the National Parks and Wildlife Advisory Council and special advisory committees.

Provisions are made for management of reserved land including preparation and approval of management plans. The role of the managing authority for reserves is defined and provision made for establishment of conservation management trusts for reserves. The Act provides controls on access to and activities within reserves and includes requirements for business licences, leases and licences. Regulations are provided for and the scope of these outlined.

The Act covers enforcement matters, including powers of authorised officers under the Act and the issuing of infringement notices.