

29 March 2010

Rachel Burgess-Dean
Natural Resources and Environment
Department of Environment and Resource Management
PO Box 15155
CITY EAST QLD 4002
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Dear Rachel,

R.E. State Planning Policy: Air, Noise and Hazardous Materials 2009

Australian Pork Limited (APL) welcomes the opportunity to comment on the Department of Environment and Resource Management (DERM): Natural Resources and Environment – *State Planning Policy: Air, Noise and Hazardous Materials 2009*.

APL is the national representative body for Australian pork producers. APL works with the broader pork industry. It is a producer-owned, not-for-profit company combining marketing, export development, research & innovation and policy development. This assists in securing a profitable and sustainable future for the Australian pork industry. APL's members currently represent approximately 92 percent of Australian pork production.

APL does not support the *State Planning Policy: Air, Noise and Hazardous Materials 2009* in its current form. The draft *State Planning Policy: Air, Noise and Hazardous Materials 2009* is confusing and unclear. It fails to clearly outline the changes the policy will have on the existing development assessment process. Further work is needed to clarify the role of the *State Planning Policy: Air, Noise and Hazardous Materials 2009* and the terminology referred to throughout it. Further, it should refer to the existing Environmentally Relevant Activities (ERA) assessment process which can ably assist local governments with development assessments and possibly in the creation of local planning schemes.

It inappropriately singles out intensive animal industries as an environmental air, noise and hazardous industry. This approach is fundamentally unsuitable for intensive agriculture as it is not an industrial activity. The policy is not a best fit for pork producers and harms the future right to operation for those within five kilometres of land zoned primarily for a sensitive use. APL believes that the DERM's intention to implement this policy does not take into consideration the impact these additional regulations may have on producer competitiveness within five kilometres of land zoned primarily for a sensitive use.

APL remains concerned that the *State Planning Policy: Air, Noise and Hazardous Materials 2009* will overburden those affected producers with more regulations. We welcome any further enquiries from the Department of Environment and Resource Management.

Yours sincerely,

(signed)
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Executive Summary

APL is concerned that the *State Planning Policy: Air, Noise and Hazardous Materials 2009* will add yet another layer of administrative process that will negatively impact on Queensland pig producers within five kilometres of land zoned primarily for a sensitive use.

The proposed *State Planning Policy: Air, Noise and Hazardous Materials 2009* is not a good fit for pork producers: it harms the future of those producers right to operate within five kilometres of land zoned primarily for a sensitive use.

There are problems with the enforced separation distance for piggeries within five kilometres of an area zoned primarily for a sensitive use. This is covered in Section 4. Not only is intensive animal industries the only sector that is subject to this rule, it does not take into account other acceptable physical barriers which should allow a reduced separation distance, and does not take into account existing guidelines in this area.

Second, intensive animal industries, such as pork production, are not an industrial activity. Much of the information in the *State Planning Policy: Air, Noise and Hazardous Materials 2009* relate to industrial issues. This is of particular concern with the Performance Criteria and Acceptable Solutions where it has set inappropriate and impractical criteria to assist planners assess development for piggeries. Our comments seek to shift away from mandatory Performance Criteria and Acceptable Solutions to those that are outcome based and reflect existing protocols for development approvals.

The current Performance Criteria and Acceptable Solutions are drafted in such a way that should a material change of use occur for an existing piggery development, these producers will be forced to comply with impossible and impractical 'Acceptable Solutions'. Given that a material change of use is unclear and that any development activity under Queensland regulations may be assessable regardless of the *State Planning Policy: Air, Noise and Hazardous Materials 2009*, this puts every piggery development within five kilometres of land zoned primarily for a sensitive use at a planning risk.

Further, the draft *State Planning Policy: Air, Noise and Hazardous Materials 2009* fails to clearly outline the policy changes in the existing development assessment process on intensive animal industries, and simply duplicates the Environmentally Relevant Activities (ERA) assessment and approval process. It is therefore an inappropriate and unnecessary criterion. The current ERA approval process is a best fit for addressing development assessment for intensive animal industries.

| While reverse buffers exist for other industries, they ~~are not~~ are not available for intensive animal industries. Intensive animal industries within five kilometres of areas zoned for sensitive use purposes appear to be singled out as a standalone industry in Schedule 7 of the *State Planning Policy: Air, Noise and Hazardous Materials 2009* and consequently are not protected. APL supports a policy encouraging 'reverse buffers' and appropriate zonings to protect future sensitive uses from existing industries and vice versa.

If the *State Planning Policy: Air, Noise and Hazardous Materials 2009* was about protecting existing industries from encroachment and new developments from existing industries, it would be more logical to state that the decision maker needs to give due consideration to existing developments and be aware of existing guidelines and existing

process before implementing additional mandatory outcomes on those affected producers.

Finally APL is extremely concerned that the relevant intensive livestock unit in Department of Employment, Economic Development & Innovation (DEEDI) did not know about the draft *State Planning Policy: Air, Noise and Hazardous Materials 2009* until contacted by APL.

1. The Role of the State Planning Policy: Air, Noise and Hazardous Materials 2009

APL recognises that there are existing regulations and guidelines for the development and zoning of piggeries.

Instead of seeking to adopt new mandatory aspects to development applications, the *State Planning Policy: Air, Noise and Hazardous Materials 2009* should instead focus on process and notification triggers first, and implement new policies if needed to clarify responsibilities.

There is the potential regulatory overlap of processes expected to be enacted as part of the draft *State Planning Policy: Air, Noise and Hazardous Materials 2009*. Intensive animal industries already have development assessment criteria under the Environmentally Relevant Activities (ERA) scheme. Administration and enforcement of ERA's is already shared between DERM and DEEDI. Importantly, the ERA scheme identifies through the Environmental Emission Profiles¹ the nature and scale of the industry in question, and consequently the dimension of the expected impact on community amenity. APL's understanding is that from this, that the ERA approvals process can assess the impact of air emissions and noise disturbances on existing or new sensitive developments.

One of the most confusing aspects of the *State Planning Policy: Air, Noise and Hazardous Materials 2009* is the language used. Terms such as 'require', 'must', and 'comply' create a document that appears to be one of enforcement, rather than a document whose guidelines that should be considered as part of the development application process.

APL acknowledges that local governments in Queensland have been requesting guidance from the Government about development applications and zoning for industries, including intensive animal industries. However a clear delineation of approval responsibilities and a reworking of the language used in the *State Planning Policy: Air, Noise and Hazardous Materials 2009* **isare** needed.

2. Existing Regulations, Policies and Guidelines

DERM should provide clarification as to the impact of the *State Planning Policy 1/92: Development and the Conservation of Agricultural Land* on how this would be tied in with the new *State Planning Policy: Air, Noise and Hazardous Materials 2009*. The *State Planning Policy 1/92: Development and the Conservation of Agricultural Land* was approved by the Queensland Government in December 1992, under the *Local Government (Planning and Environment) Act 1990–1992*.² *State Planning Policy 1/92* remains current under the *Sustainable Planning Act 2009*³. The purpose of the policy is below:

“1.1 This State Planning Policy addresses the conservation of good quality agricultural land and provides guidance to local authorities on how this issue should be addressed when carrying out their range of planning duties. The Policy has been jointly prepared by the Department of

¹ <http://www.mintrac.com.au/files/newsletter/Environment%20mgr%20network/EPA%20-%20handout%201.pdf>

² http://www.derm.qld.gov.au/land/planning/pdf/public/plan_guide.pdf

³ <http://www.dip.qld.gov.au/policies/state-planning-policies.html> Last Updated 23 December 2009

Housing, Local Government and Planning and the Queensland Department of Primary Industries (DPI).

1.2 Local authorities, the Planning and Environment Court; and the Government are required to have due regard to this Policy when carrying out their planning functions.”

The *State Planning Policy: Air, Noise and Hazardous Materials 2009* should also give regard to the *Planning Guidelines: The Identification of Good Quality Agricultural Land*. This Planning Guidelines was released in 1993 and addressed the definition and identification of good quality agricultural land and appropriate planning approaches to achieve the protection of such land.

3. Zoning

APL wishes to highlight its concern of the current zoning definitions. To include agricultural activities within existing rural areas is to expose Queensland piggeries to increased residential development from those who move into rural zones to live. As a consequence, APL would welcome a change from the term, ‘rural’ to ‘agricultural’.

Industrial activities already take a zoned approach in the *State Planning Policy: Air, Noise and Hazardous Materials 2009*. Because intensive animal industries cannot take a zoned approach, the alternative in creating Performance Criteria and Acceptable Solutions is still fundamentally unsuitable for piggeries. It duplicates assessment criteria already addressed by an ERA assessment.

4. Schedule 7 of the State Planning Policy: Air, Noise and Hazardous Materials 2009

APL contends that there are fundamental problems with the Performance Criteria and Acceptable Solutions in Schedule 7: Development Assessment Code of the *State Planning Policy: Air, Noise and Hazardous Materials 2009*.

The draft *State Planning Policy: Air, Noise and Hazardous Materials 2009* and its role is unclear. It claims to have a non-enforceable role once its intent is incorporated in the local planning instrument. The draft *State Planning Policy: Air, Noise and Hazardous Materials 2009* notes, ‘*In accordance with the Sustainable Planning Act 2009, when the draft Policy outcome has been reflected in the local planning instrument, the draft Policy no longer applies in development assessment. This is because the planning instrument carries the intent of the draft Policy in decisions under the Integrated Development Assessment System (IDAS).*’ However, the explanatory statement of the *State Planning Policy: Air, Noise and Hazardous Materials 2009* states that it also provides direction for development assessment.

This could be potentially confusing to the planning authorities as to when the Acceptable Solutions and Performance Criteria apply, especially if similar assessment protocols already exist via the ERA assessment process. If developments require approval under an ERA, why should the *State Planning Policy: Air, Noise and Hazardous Materials 2009* seek to duplicate that process for a very similar outcome? There should not be two separate processes to determine a development’s suitability.

Although the stated Acceptable Solutions in the *State Planning Policy: Air, Noise and Hazardous Materials 2009* represent one way in which the relevant performance criteria may be met, APL believes that this may give local governments the wrong impression in managing piggery development applications when triggered, particularly if they do not

know of existing guidelines, such as the *Separation Guidelines for Queensland Piggeries (2004)*.

What may also add to local planners confusion is the comment on Page 7 of the draft *State Planning Policy: Air, Noise and Hazardous Materials 2009*, where it states, that the local planning instrument, 'requires that intensive animal industries are located, designed and constructed to protect the environmental values including human health and wellbeing from air and noise emissions.' This gives the impression that intensive animal industries are as hazardous to human health and wellbeing as much as an industrial activity.

The performance criteria and acceptable solutions are also drafted in such a way that should a material change of use occur for an existing piggery development, these producers will be forced to comply with impossible and impractical 'acceptable solutions'. Given that a material change of use is unclear and that any development activity under Queensland regulations may be assessable regardless of the *State Planning Policy: Air, Noise and Hazardous Materials 2009* this puts every piggery development within the five kilometre radius of a sensitive use development at a planning risk. Some of these development activities are discussed in Point 4.

APL's feedback to the Performance Criteria and Acceptable Solution is based on the yet to be released National Environmental Guidelines for Piggeries 2009, which sought feedback from up to thirty (30) pig industry consultants, state government agencies, pig producers, and importantly, state environmental protection authorities.

Performance Criteria	Acceptable Solution
<p>PC 1 – The development is located to reduce and minimise air and noise emission impacts on human health and wellbeing.</p>	<p>AS 1.1 – The development is located in a rural zone.</p> <p>and</p> <p>AS 1.2 – Offensive and annoying odours will not impact on the nearest zone that is primarily for sensitive uses.</p> <p><i>Note: This should be measured in accordance with the Queensland Odour Impact Assessment Guideline.</i></p>
APL COMMENT	
	<p><i>AS 1.1 - Existing developments will not be able to retrospectively be able to apply if they are already in a zone pre designated for sensitive uses.</i></p> <p><i>AS 1.2 – This will be impossible to achieve. At least the development should seek to minimise any impacts on sensitive uses. What about piggery sites that were already established prior to any 'sensitive' developments?</i></p> <p><i>The State Planning Policy: Air, Noise and Hazardous Materials 2009 should also reference the Separation Guidelines for Queensland Piggeries (2004) and APL's National Environmental Guidelines for Piggeries.</i></p> <p><i>Producers may also elect to follow the Environmental Code of Practice for Queensland Piggeries.⁴ Published in 2000, it addresses community amenity issues including an explanation of the Environmental Protection (Air) Policy 1997, noise management for piggeries and suggested management practices to meet the</i></p>

⁴ http://www.dpi.qld.gov.au/4789_14377.htm

	<i>objectives. The acceptable solution should be that the piggery operator be made aware and have regard for the Code of Practice. It should be noted that the Code of Practice is only a guideline.⁵</i>
PC 1 (by APL) <i>The community, water resources and vegetation are protected by providing buffers and separation distances that mitigate odour impacts.</i>	AS 1.1 (by APL) <i>An ERA assessment shall take place to advise local government on appropriate actions that must be undertaken.</i>

Performance Criteria	Acceptable Solution
PC 2 – The development is orientated to protect sensitive uses from noise emissions generated by the development.	AS 2.1 – The development is designed so that major openings in buildings and all areas where work may be conducted are located away from the nearest sensitive use.
	And AS 2.2 – The indoor acoustic quality design objectives in Schedule 7 will be achieved at the location of the nearest sensitive use.
APL COMMENT	
	<i>AS 2.1 If the piggery development is already there, will the site have to be shut down and what compensation is the producer eligible for loss of business due to rezoning?</i> <i>AS 2.2 –The State Planning Policy: Air, Noise and Hazardous Materials 2009 claims that existing developments are not affected, but does not address extension, development, expansion and refurbishment plans?</i>
PC 2 (by APL) <i>Careful site selection is imperative in minimising the likelihood of noise nuisance for nearby receptors.</i>	AS 2.2 (by APL) – <i>An ERA assessment shall take place to advise local government on appropriate actions that must be undertaken.</i>

Performance Criteria	Acceptable Solution
PC 3 – The development is orientated to protect sensitive uses from air emissions that are generated by the development	AS 4.1 – Stacks, vents or ducts used to dispose of air emissions face away from the nearest sensitive use. And AS 4.2 – Drainage lines and areas for waste disposal are positioned away from the nearest sensitive use.
APL COMMENT	
	<i>AS 4.1 – With a material change of use, for existing piggery developments, if there is a change, they will be forced to install</i>

⁵ http://www.dpi.qld.gov.au/4789_14377.htm

	<p>stacks, vents or ducts. This will be costly and unnecessary change for piggery operators. This would be uneconomical and for the most part unnecessary in most cases if taking into account site specific circumstances. The criterion i.e. stacks and vents are inappropriate - odour control/dispersion technologies need to be assessed on a case by case basis due to economics and effectiveness. Often stacks make the problem worse by shifting the deposition site of emissions.</p> <p>AS 4.2 – Acceptable solutions as suggested by the draft State Planning Policy: Air, Noise and Hazardous Materials 2009 are impractical.</p>
<p>PC 3 (by APL)</p> <p><i>Pig housing that is designed constructed and managed to prevent adverse impacts on community amenity.</i></p>	<p>AS 4.1 - An odour assessment can determine if an unreasonable odour impact is likely at off-site receptors.</p> <p>AS4.2 - Expert advice should be sought on structural design and internal layout of piggery buildings.</p> <p>AS 4.3 - Effluent management systems that are designed, constructed and managed without causing odour nuisance or adverse impacts on community amenity.</p>

Developments that may be affected

The *State Planning Policy: Air, Noise and Hazardous Materials 2009* could complicate any one of the specific development activities applicable to the pork industry which falls five kilometres of land zoned primarily for a sensitive use, which are assessable development under Queensland regulations. They include:

Piggery housing

There are a variety of production systems that are currently used in Queensland. They are continuously evolving to improve efficiency, herd health and productivity.

The four main options for housing pigs are:

- Indoor cement and/or slatted floored individual pens (note that only sows and boars are housed in individual pens);
- Indoor cement and/or slatted floored group pens with various individual or group feeding systems – partial feeding stalls, electronic feeding stations, trickle and floor feeding etc;
- Indoor large open-sided sheds, hoop-like structures, with deep litter flooring (rice hulls, straw, sawdust or similar), sometimes referred to generically as ‘deep litter housing’ accommodating compatible groups of pigs. They are used extensively for growing pigs and for group housing of dry sows; or
- Outdoor paddocks, which include rooting areas, wallows, and kennels/huts for shelter (free range). These systems are only suitable for certain parts of the country and pose disease risks and a risk to the environment if not carefully controlled.

However, the new requirements for stalls and crates under the Model Code of Practice for the Welfare of Animals (Pigs)2007 being rolled out in Australian states in combination with that the *State Planning Policy: Air, Noise and Hazardous Materials 2009* could impact on development applications. Currently some industry housing is unsuitable and the *State Planning Policy: Air, Noise and Hazardous Materials 2009* does not

explicitly account for the mandatory changes needed in piggery housing for welfare considerations. Notably, the standards in the Model Code of Practice for the Welfare of Animals: Pigs (2007)⁶ will be enforceable by state law and policed by state authorities.

Some of the infrastructure changes required includes:

- The area of all new stalls will be increased;
- For pregnant sows there will be a maximum of six weeks (previously 16 weeks) in stalls, after which they will be released into group housing situations with other sows. This will require new infrastructure changes on-site;
- Farrowing crate area is to be increased in all new installations;
- The use of any stall or crates for boars or sows will require that they be appropriate for the size of the animal and allow them to stand and lie down without obstruction or injury.
- Additionally, all these housing types require regular maintenance and replacement of essential infrastructure.

Plumbing or drainage work in relation to water use on-farm, effluent collection and effluent treatment

- Development approvals may impact on the planning, installation and on-going upkeep of effluent collection systems and effluent treatment systems. The pig industry is highly dependent on water for drinking, washing down (sheds and pigs), cooling (pigs and facilities) and manure management.

Material Change of Use

- The 'material change of use' requirement in the *State Planning Policy: Air, Noise and Hazardous Materials 2009* we believe will affect:
 - 1) a new piggery development - -For the purpose of the *State Planning Policy: Air, Noise and Hazardous Materials 2009* developments may be easy to manage by encouraging development into a rural/agricultural zone.
 - 2) existing piggery expansion including an expansion of the pig herd (i.e. an increase in the threshold of an environmentally relevant activity on the premises). This process will trigger an ERA assessment. The new criteria proposed in the *State Planning Policy: Air, Noise and Hazardous Materials 2009* will duplicate the ERA process and it is unsuitable to retrofit.
 - 3) existing piggery with no planned changes but encroachment potential – this is not adequately addressed in the *State Planning Policy: Air, Noise and Hazardous Materials 2009*. This is addressed for every other industry i.e. distances to zones.

⁶ <http://www.australianpork.com.au/pages/page103.asp>

5. Separation distance

APL is particularly concerned with the application of the proposed *State Planning Policy: Air, Noise and Hazardous Materials 2009*, where it states on page 6, '(3) The draft Policy applies to a material change of use for an intensive animal industry that is assessable development, and proposed within five kilometers of land zone primarily for a sensitive use.'

Part 3 does not have a rationale for the five kilometre area. It also seems that other industries are not subject to the same five kilometre trigger. The five kilometre separation distance should not alone be the trigger for assessable development in an area zone for sensitive development. It does not take into account acceptable physical barriers. If there are physical barriers in place such as trees or terrain or additional impact limiting structures then a reduced separation distance should apply.

The draft *State Planning Policy: Air, Noise and Hazardous Materials 2009* should instead make reference to the existing *Separation guidelines for Queensland piggeries*.⁷ The *Separation guidelines for Queensland piggeries* also states that the guidelines were designed to assist regulators with development applications for new or expanding piggery developments under the *Environmental Protection Act 1994* and the then *Integrated Planning Act 1997*.⁸

If the *State Planning Policy: Air, Noise and Hazardous Materials 2009* was about protecting existing industries from encroachment and new developments from existing industries, it would be more logical to state that the decision maker needs to give consideration to or enforce separation distances unless a site specific risk assessment incorporating odour modeling can demonstrate that the new development will not be adversely impacted.

⁷ <http://www2.dpi.qld.gov.au/extra/pdf/environment/sepguidelines.pdf>

⁸ <http://www2.dpi.qld.gov.au/extra/pdf/environment/sepguidelines.pdf>

6. Reverse buffers

APL supports a policy of 'reverse buffers' to protect new 'sensitive' developments from existing industries, and providing protection to existing industries from encroachment of 'sensitive' developments listed in Schedule I of the *State Planning Policy: Air, Noise and Hazardous Materials 2009*. However it appears that this policy does not provide reverse buffer protection to intensive animal industries. It instead singles them out to require an Integrated Development Assessment System (IDAS) with criteria that do not impact on new or future sensitive uses. This is not in line with the purpose of the document.

We again note that in Queensland, there are already planning tools in place via the ERA development approval process to ensure that environmental risks are addressed for new or expanding developments. If the draft *State Planning Policy: Air, Noise and Hazardous Materials 2009* is about 'sensitive' use encroachment and 'reverse buffers' why is it triggering a material change in use when that is already captured under the ERA assessment process?

7. Conclusion

APL believes that the DERM's intention to implement this policy does not take into consideration the impact these additional regulations may have on producer competitiveness within five kilometres of land zoned primarily for a sensitive use.

APL does not support the *State Planning Policy: Air, Noise and Hazardous Materials 2009* in its current form. To single out intensive animal industries as an environmental air, noise and hazardous industry is misleading. The approach undertaken is fundamentally unsuitable for intensive agriculture as they are not an industrial activity. The policy is not a best fit for pork producers and harms the future right to operation for those within five kilometres of land zoned primarily for a sensitive use.

The draft *State Planning Policy: Air, Noise and Hazardous Materials 2009* is confusing and unclear. It fails to clearly outline the changes the policy will have on the existing development assessment process. Further work is needed to clarify the role of the *State Planning Policy: Air, Noise and Hazardous Materials 2009* and the terminology referred to throughout it. It should include existing guidelines which can ably assist local governments with development assessments and in the creation of local planning schemes.

APL remains concerned that the *State Planning Policy: Air, Noise and Hazardous Materials 2009* will overburden those affected producers with more regulations.