

## Summary Assessment of Provincial Legislative Framework PRINCE EDWARD ISLAND

Overall, the strength of Prince Edward Island’s legislative framework for protecting farmland is **very weak**. In PEI, there are no provincial land use policies or statements of interests that provide enterprise-wide direction to planning efforts, or farmland protection. A profile of the provincial legislative framework is provided at the end.

Note: The current legislative framework for land use planning is currently being updated<sup>1</sup>.

### Strength of Provincial Legislative Framework: Summary Assessment

	Maximise stability	Integrate across jurisdictions	Minimise uncertainty	Accommodate flexibility
<b>Prince Edward Island</b>	*	*		

\* = Very weak; \*\*\*\*\* = Very strong

#### Maximise stability

Only 11% of PEI’s land base, representing 32 municipalities, is covered by municipal official plans and zoning bylaws.<sup>2</sup> These municipalities operate under the *Planning Act*. Among other things, the Act sets the requirements for planning efforts and statutory plans of municipal governments, for which an Official Plan and Zoning Bylaw are the primary tools. Section 12 of the Act states what an official plan shall include, which are (a) a statement of objectives; (b) policies for future land use, management and development; and (c) proposals for its implementation, administration and the periodic review.

For the 90% of the provincial lands not covered by an official plan or zoning, the Subdivision and Development Regulations apply, whereby authority for approving and setting conditions for subdivisions and development permits rests with the ministers exercising the discretion they are granted under the regulations, and by Executive Council.

Two other legislative acts pertain to agriculture. The *PEI Lands Protection Act* regulates property rights and sets restrictions on ownership of agricultural lands. Individual persons are limited to holding a maximum of 1,000 acres, and corporations are limited to holding a maximum of 3,000 acres. The Act was updated recently to clarify criteria and to permit flexibility for agricultural land owners and encourage better land stewardship. The *Farm Practices Act* protects farmers from nuisance complaints.

According to the report of the Commission on Land and Local Governance, “New Foundations” (2009), current conditions (i.e., 90% of the land base not governed by comprehensive plans) reflect the prevalence of the private interests of landowners over public interests in land use planning. The authors of the report identified a number of related weaknesses in the current legislative framework that undermine stability, with implications for agricultural lands.

<sup>1</sup> <http://www.gov.pe.ca/landandlocalgovernance/index.php3?lang=E>

<sup>2</sup> Province of Prince Edward Island, <http://www.gov.pe.ca/mapp/index.php?number=1040441&lang=E>

- The Department of Communities, Cultural Affairs and Labour does not have the capacity to provide adequate planning advisory services to communities;
- There is no effective process for resolving land use conflicts in unincorporated areas;
- Special planning areas can be established or modified by order of Executive Council without the requirement for any public consultation or prior notification, and these can supersede or suspend a municipal official plan;
- Some developments have been approved despite the apparent likelihood that they would precipitate premature development or unnecessary public expenditure, or place pressure on a municipality or the Province to provide services;
- Although due regard can be given to compatibility with surrounding uses in considering applications for subdivision development, there is no indication that this condition has been applied consistently;
- Under section 11 of the Subdivision and Development Regulations, the Minister may hold a public meeting regarding any proposed subdivision or development, but the Minister is not required to do so and, usually, the public is notified only after the development has been approved;
- With the sweeping powers granted to it under the *Planning Act*, Executive Council can develop or modify regulations at a weekly meeting of Cabinet with no public input or public consultation, and without the guiding framework of a provincial land use policy.

#### Integrate public priorities across jurisdictions

Although there are no provincial land use policies or statements of provincial interest to protect farmland, the *Planning Act* does enable the Province to do so, which would support the integration of public priorities across jurisdictions. Section 7(1) enables the Lieutenant Governor in Council to (a) adopt provincial land use development policies, (b) establish minimum requirements applicable to official plans; and (c) make regulations establishing minimum development standards respecting public health and safety, protection of the natural environment, and landscape features. Section 9(1.1) provides the requirement for integration; it states that municipal land use policy and bylaws “shall be consistent with” provincial policy. A weakness of not having these provincial policies in place is noted in the Commission on Land and Local Governance report (2009, p. 25),

The Island Regulatory and Appeals Commission can examine and rule on the process followed by a developer and the responsible government authority but, in the absence of a provincial land use policy, it cannot stop a development on the grounds that it may be an inappropriate use of land.

This noted weakness reflects an overall lack of integration within the legislative framework.

#### Minimise uncertainty

Many of the weaknesses in the legislative framework that were identified in the Commission on Land and Local Governance report also contribute to uncertainty.

#### Accommodate flexibility

In the absence of stated provincial interests in protecting farmland and land use policies, along with a weak land use planning system, the matter of accommodating flexibility is redundant.

#### Addendum: Current review and pending changes

The Task Force on Land Use Policy issued its report in 2014 and included many recommendations that would strengthen PEI's legislative framework for protecting farmland through land use planning. Most notably, the Task Force recommended that the Government adopt a Provincial Land Use Policy and Statements of Provincial Interest. Although many of these recommendations have appeared in previous reports, it appears that long-standing concerns about the lack of an enterprise-wide planning framework will be addressed, after the Government endorsed the direction of the report. The following is the recommended statement of provincial interest in protecting farmland.

It is in the Provincial Interest to...protect the agricultural land base and offer certainty to farmers in land use decisions, so we have viable farms for the long term (p. 17).

The recommended provincial land use policy for agriculture is as follows:

Goal 6: Identify and protect agricultural land

- 6.1 Identify arable land; include agricultural reserve zones in official plans where appropriate;
- 6.2 Require minimum separation distances for development adjacent to agricultural land; acknowledge possible need for secondary housing for persons engaged in the farming enterprise (parents, children, workers);
- 6.3 Protect agricultural operations by maintaining the option to expand or diversify farms and allow for the development of related industries, while respecting compatibility with existing land use and infrastructure;
- 6.4 Regulate intensive agricultural operations by siting them with care for existing land uses, and prevent environmental contamination;
- 6.5 Official plans should respect the Farm Practices Act and provide protection for normal farm practices; best management practices for manure management should be followed to prevent environmental degradation.

Summary Assessment of Provincial Legislative Framework: Prince Edward Island

Legislative Framework for Prince Edward Island

	<b>POLICY</b>	<b>LEGISLATION</b>	<b>GOVERNANCE</b>
<b>PROVINCIAL</b>	<p>New Foundations The Report of the Commission on Land and Local Governance (Thompson Report) (2009)</p> <p>The Gift of Jurisdiction Report of the Commission on the Lands Protection Act (The Carver Report) (2013)</p> <p>The Report of the Task Force on Land Use Policy (2014)</p>	<p><i>Planning Act</i></p> <p><i>PEI Lands Protection Act</i></p> <p><i>Farm Practices Act</i></p> <p><b>Subdivision and Development Regulations</b></p>	<p>Island Regulatory and Appeals Commission</p>
<b>REQUIRED INTEGRATION</b>	<p><i>Planning Act</i> 9(1.1) Where</p> <p>(a) a provincial land use and development policy pursuant to clause 7(1)(a);</p> <p>(b) minimum requirements applicable to official plans pursuant to clause 7(1)(b); or</p> <p>(c) regulations pursuant to clause 7(1)(c) have been adopted, established or made, the land use policy of a council or the official bylaws of a municipality shall, subject to subsection 7(2), be consistent with them.</p>		
<b>LOCAL</b>		<p><i>Official Plan</i></p> <p><b>Zoning Bylaw</b></p>	<p>Planning Board</p>

*Acts (provincial laws), bylaws (local government laws, e.g., official municipal plan) [italicised]*

**Enforceable policy, regulations pursuant to acts [bold]**

Aspirational policy at all levels [plain text]