



**Environment Protection Authority**

GPO Box 2607 Adelaide SA 5001  
211 Victoria Square Adelaide SA 5000  
T (08) 8204 2000 F (08) 8204 2020  
Country areas 1800 623 445

EPA 297-188

Mr Michael Lennon  
Chair, State Planning Commission  
Department of Planning, Transport and Infrastructure  
GPO BOX 1815  
ADELAIDE SA 5001

Dear Mr Lennon

**Planning and Design Code in the Outback (Land not within a council area)**

Thank you for providing the Environment Protection Authority (EPA) with the opportunity to comment on the 'Planning and Design Code in the Outback (Land not within a council area) Phase One (February 2019) ('the Outback Code').

In reviewing the Outback Code, the key interest of the EPA is to ensure that all environmental issues within the scope of the objects of the *Environment Protection Act 1993* are identified and considered. The EPA is primarily interested in the potential environmental and human health impacts that would result from policies included in the Outback Code and, therefore, to ensure that appropriate planning policy is included to allow proper assessment at the development application stage.

In Attachment 1 of this response the EPA has provided general comments, which would be applicable to all phases of the Planning and Design Code.

The EPA has also provided a response on the Outback Code to the Department of Planning, Transport and Infrastructure (DPTI), which contains comments of a more detailed nature.

For further information on this matter, please contact Geoff Bradford on [REDACTED] or

[REDACTED].

Yours sincerely



Phil Hazell

**MANAGER PLANNING AND IMPACT ASSESSMENT  
ENVIRONMENT PROTECTION AUTHORITY**

17 April 2019

*Attachments*

Attachment 1: EPA comments on the Planning and Design Code in the Outback (Land not within a council area)

---

## **Attachment 1 – EPA comments on the Planning and Design Code in the Outback (Land not within a council area)**

### Simplification of Planning Policies

The EPA understands that the Planning and Design Code, as stated on the SA Planning Portal, seeks to create a development assessment process that is ‘fast, flexible, and easy to use’. The EPA supports that intent but is concerned, that in the transition of planning policy from the old to the new planning system, there will be a simplification of policy that could lead to a consequent loss of rigour in the assessment process.

The EPA notes that assessment policies in the Outback Code have become very general and, in relation to some issues, lacks clear measurable assessment criteria. This concerns the EPA particularly if there is not appropriate capacity building to ensure planners have the skills and guidance documents to help them undertake development assessment.

Following EPA Board endorsement, the EPA wrote to the Department of Planning Transport and Infrastructure (DPTI) on 28 March 2018 and recommended a significant rationalisation of the range of development application referrals to the EPA under the new planning system on the basis that development types that would no longer be referred to the EPA could be adequately assessed via planning policy included in the Code. In light of this, the EPA is particularly concerned about the simplification of policy proposed in the *Building near airfields* overlay and the *Design and Siting and Land division* sections in Part 4 of the Outback Code. Therefore, the EPA wishes to work closely with the Planning Commission and DPTI to improve Code policy in lieu of the development application referrals that the EPA recommended in March 2018 could be rationalised.

### Practitioner’s Guide to the Planning and Design Code in the Outback – Content on Referral Triggers

The EPA notes that the *Practitioner’s Guide to the Planning and Design Code in the Outback* contains information on the review and proposed triggers for development application referrals to various agencies such as the Coast Protection Board and Minister for the River Murray. However, despite there being a substantial review of the triggers for development application referrals to the EPA, there is no information or explanation of the rationalisation undertaken by the EPA in the Practitioner’s Guide. The EPA would appreciate rectification of this oversight.

### Referrals to EPA and Deemed-to-Satisfy Criteria

The EPA supports the concept of deemed-to-satisfy criteria for simple development applications, in order to make their assessment easier and faster. Although deemed-to-satisfy criteria are used sparingly in the Outback Code, the EPA understands that deemed-to-satisfy criteria will be prepared for future versions of the Planning and Design Code.

The EPA notes that deemed-to-satisfy criteria are proposed to be applied in the Outback Code to development that would be referred to the EPA. The EPA is concerned that the use of deemed-to-satisfy criteria in such situations could cause confusion for the relevant authority about whether a referral applies or could even fetter the EPA’s powers when responding to a referred application.

The EPA prefers that deemed-to-satisfy criteria not be applied to forms of development that would require referral to the EPA. The EPA is concerned that deemed-to-satisfy criteria may conflict with an EPA assessment of a referred development application under Section 57 of the *Environment Protection Act 1993*. At least in relation to the first generation of the Planning and Design Code (i.e. the Outback Code), the EPA recommends that this conflict be avoided.

#### Out of Councils – Whyalla Steel Works

In December 2018 the Whyalla steel works announced a major transformation upgrade to the facility. The Whyalla steel works is of strategic importance to the State as it is a major employer and manufacturing operation in the State. Currently the site is zoned *Remote Areas zone* and this is proposed to continue in the Code however the current *Land not within a council area (LNWCA) Eyre, Far North, Riverland and Whyalla in LNWCA(W)/1 Whyalla Town Plan* indicates this land should be used for industrial purposes – in essence, a de facto industrial zone. In addition, the LNWCA includes the *industrial development* module from the *South Australian planning policy library* (2011). The EPA is concerned that the proposed policy structure applied to the Whyalla Steel Works site in the Outback Code does not identify the intent to continue industrial use on this site in the future as neither the structure plan ‘zoning’ nor the industrial development module has not been transitioned. The EPA would like to work with the Planning Commission and DPTI to explore policy solutions to ensure the strategic importance of the site for industrial purposes is maintained through the Outback Code.

#### Overlays

The Outback Code presents a number of overlays that identify policies in relation to particular issues that are of state interest.

Whilst the EPA supports the concept of overlays, it notes that there are a large number of them proposed in the Outback Code when compared with the number of overlays in the *South Australian planning policy library* (2011).

For example, there are several overlays that relate to water quality issues associated with the River Murray (e.g. Hazards (Acid Sulfate Soils), Prescribed Watercourses, Ramsar Wetlands, River Murray Floodplain; Water Resources, River Murray Water Protection Area – albeit the latter one does not appear to be present in the Outback Code, but is shown on mapping).

Each of the overlays addresses important issues, but there is the potential that due to the large number of them there may be duplication of policies or confusion in respect of which policies would apply to a particular development application.

The EPA recommends that the overlays be reviewed and, where necessary, should be rationalised, including the removal of any conflicts (as far as possible).

#### *Water Protection Area Overlay*

As part of the recommended review and rationalisation of overlays within the Outback Code, the EPA considers that the use of a water protection area overlay should be investigated, not only for the River Murray Water Protection Area but also the Penong Water Protection Area, which is within the area to which the Outback Code applies, and for the many other water protection areas within South Australia,

as proclaimed under section 61A of the *Environment Protection Act 1993*.

#### *Air and Noise Emissions Overlay*

The EPA notes that the Noise and Air Emissions Overlay, which is part of the South Australian Planning Policy Library, and which is closely associated with *Minister's Specification SA 78B for the Construction Requirements for the Control of External Sound*, is not included in the Outback Code.

The EPA understands that there are major roads that carry heavy transport vehicles within the area affected by the Outback Code to which the Noise and Air Emissions could be applied. Therefore, the EPA recommends that it be included in the Outback Code.

The EPA is also particularly concerned to ensure that the Noise and Air Emissions Overlay is included in the other phases of the Planning and Design Code.

#### Sensitive Receivers

The EPA has recently reviewed the document, *Evaluation distances for effective air quality and noise management* (2016). As part of that review, the EPA examined the wording used to describe people, other organisms and places that could be affected by air or noise emissions and have changed how they would be described.

The EPA will now use the term, 'sensitive receiver', rather than 'sensitive land use' or 'sensitive receptor', and defines it in the following way:

'A sensitive receiver includes:

- any fixed location (including a house, building, other premises or open area) where:
  - human health<sup>#</sup> may be affected by air emissions from existing or proposed development, and/or
  - property damage or loss of amenity may be caused by air emissions from the existing or proposed development, and/or
- noise-affected premises (whether existing or future, based on land use zoning) that are in separate occupation from the existing or proposed noise source and used for residential or business purposes or constitute a quiet ambient environment set aside for public recreation and enjoyment, and/or
- plants, animals or ecosystems that may be affected by air and/or noise emissions.

<sup>#</sup> Note: In the case of air quality, the type of sensitive receivers will vary depending on the pollutant(s) in question, as different pollutants have impacts at different concentrations and over different periods of time. An important consideration when identifying potential sensitive receivers is length of exposure. The averaging time of ground level concentrations (GLCs) and odour level criteria in the *Environment Protection (Air Quality) Policy 2016* can be used as a guide when determining whether a given location is a potential sensitive receiver. For example, the GLC for nitrogen dioxide has a 1-hour averaging period, and any location where people spend an hour or more would be considered a sensitive receiver. In the case

of particles (PM10 and PM2.5), sensitive receivers are those places where people are located for 24 hours, due to the GLCs having a 24-hour averaging time’.

As Clause 18 in the *Environment Protection (Noise) Policy 2007* requires the EPA to consider the *Evaluation distances for effective air quality and noise management* publication when assessing referred development applications, the changes to this publication are about to be officially gazetted.

As consistent terminology should be used in the planning system (wherever possible), the EPA recommends that the term ‘sensitive land use’ which is used in the Outback Code should be replaced by ‘sensitive receiver’ and that the same (or similar) definition used in the EPA’s *Evaluation distances for effective air quality and noise management* should be included in Part 6 (Land Use Definitions) of the Outback Code.

Please note that in respect of site contamination, ‘sensitive use’ is still the correct term to use and is defined in the *Environment Protection Act 1993*.

#### *Environment Protection (Noise) Policy 2007*

The EPA is in the process of reviewing the *Environment Protection (Noise) Policy 2007*, including examining its interaction with the *Development Act 1993* and the *Planning, Development and Infrastructure Act 2016*.

The EPA anticipates that the review will identify the need to amend the *Environment Protection (Noise) Policy 2007*, particularly around land use and land use categories, in order to reduce ambiguity and uncertainty for councils, developers and the community. The EPA raises this as a potential matter that may need further discussion in the future. The EPA will continue to discuss any implications from this review with the Planning Commission and DPTI staff.

#### Water Sensitive Design

Water sensitive design (WSD) is a crucial aspect of development that works to improve the quality of stormwater leaving a development site and to promote water conservation.

WSD formed an important part of the *South Australian planning policy library* and the EPA is concerned that its importance has not been transferred to the Outback Code. There has been a reduction in the scope and strength of WSD policies in the Outback Code when compared with the *South Australian planning policy library*.

The EPA understands that Water Sensitive SA has undertaken considerable work on WSD policy content to be used in the Planning and Design Code, as well as simple modelling tools that would assist with deemed-to-satisfy criteria. The EPA supports incorporation of Water Sensitive SA’s work into the Outback Code and other phases of the Planning and Design Code and is interested in working with DPTI and Water Sensitive SA to achieve this.

#### Policies Seeking Enhancement of the Environment

A number of Desired Outcomes in the Outback Code refer to ‘enhancement’, for example ‘of the natural coastal environment’ in the Coastal Areas Overlay.

The *Environment Protection Act 1993* contains an objective that similarly seeks enhancement of the

environment. Therefore, the EPA supports the intent of the Outback Code in seeking enhancement of the environment. However, the EPA notes that where a desired outcome seeks enhancement of the environment, there are no performance outcomes that would enable such enhancement to be achieved but would only enable conservation or protection outcomes.

The EPA recommends that the performance outcomes be reworded so that they seek 'enhancement' in line with the desired outcome.

#### Marine Aquaculture

In the General Section of the Outback Code is a module for aquaculture, which contains policies on land-based and marine-based aquaculture.

The EPA has recently been consulted by DPTI on a proposal for marine-based aquaculture to no longer be defined as 'development'. If implemented, this would mean that policies on marine aquaculture would no longer be required in the Outback Code and, presumably, future versions of the Planning and Design Code.

The EPA does not currently receive referrals for marine-based aquaculture, only for land-based aquaculture, and has responded to DPTI on this matter in letter dated 27 March 2019.

Despite the uncertainty about whether or not marine-based aquaculture will remain as development, the EPA has provided detailed comments on the marine-based aquaculture policies in its response to DPTI on the Outback Code.

#### Rezoning without Investigation

The EPA notes that the Outback Code embarks on rezoning, for example in respect of Boston Island, without the investigations that would normally be undertaken during a rezoning process.

Using the changes to the Boston Island zoning as an example, the current Boston Island Zone seeks to accommodate 'coastal residential, recreational, tourism and marina opportunities that embrace an island lifestyle'. In the Outback Code Boston Island is rezoned to Remote Area Zone, which envisages '*a wide range of activities from pastoral, grazing and farming activities, mining and petroleum (and associated settlement activities), tourism, renewable energy facilities, aerospace and defence facilities (and associated settlement activities)...*'. This rezoning appears to have been undertaken without investigations or consultation with the community and relevant agencies or authorities.

The EPA is concerned that this could set a precedent that would result in rezoning during the other phases of the Planning and Design Code without proper investigations being undertaken. Ultimately, this could result in zoning that would enable inappropriate development in inappropriate locations.

The EPA recommends that rezoning should not occur without proper investigations or consultation with the community and relevant agencies or authorities.