
From: Kyra Reznikov <[REDACTED]>
Sent: Monday, 25 March 2019 3:31 PM
To: DPTI:Planning Engagement
Subject: Submission - Planning & Design Code Phase 1 - Land Not Within a Council
Attachments: Phase_One_Code_Written_Submission_Form_Finlaysons.pdf

Follow Up Flag: Follow up
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Dear Jason,

Thank you for the opportunity to make submissions on Phase 1 of the Planning & Design Code (for land not within a Council area).

I attach a submission on behalf of Finlaysons Lawyers.

I would be more than happy to discuss anything in this submission with you or your team.

Regards,
Kyra

Kyra Reznikov
Special Counsel

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Kyra Reznikov - *Adelaide's Lawyer of the Year for Planning & Environmental Law (Best Lawyers of Australia 2019)*
- listed in Doyles 2018 Guide as *Recommended SA Leading Planning & Environment Lawyers*
- listed in Doyles 2016 Guide as *one of Australia's 'Rising Stars' in Planning & Environment Law*

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Submission form:

Planning and Design Code in the outback (land not within a council area)



Government
of South Australia

Department of Planning,
Transport and Infrastructure

This submission form is being used to collect feedback from practitioners and the community on the Planning and Design Code in the outback (land not within a council area). It will help us consolidate comments under specific themes so that we can more easily identify trends and consider feedback according to the zone, overlay or general module to which it applies. Your input will ensure that the new planning and development rules for the outback meet the planning needs of rural South Australians and address planning issues relevant to land outside of council boundaries.

Please send your completed submission form to:

Jason Bailey, Project Lead Planning and Design Code
Department of Planning, Transport and Infrastructure
Level 5, 50 Flinders Street, Adelaide 5000
GPO Box 1815, Adelaide SA 5001
Email: DPTI.PlanningEngagement@sa.gov.au

Section one: About you

1. Are you a planning, design or building industry professional?

Yes

No

If yes, please choose the professional field that best describes you from the drop-down list below:

OTHER

Planning lawyer

2. Are you lodging this submission on behalf of yourself or an organisation?

Self

Organisation

If you are lodging a submission on behalf of an organisation, please provide the name of your organisation below:

Finlaysons Lawyers

3. What council (or non-council) area do you typically reside in?

Involved in projects generally in out of Council areas or regional areas

4. If you wish to receive a report on the feedback received during this consultation, please provide your name and email address.

Name: Kyra Reznikov

Email address:

Section two: Feedback on the Planning and Design Code in the outback

5. Please provide your feedback on any or all of the Code sections outlined below.

PART 1 – RULES OF INTERPRETATION

These are set out very well, and clearly explain the interaction between and hierarchy of zone, subzone and overlay provisions. This is particularly useful, as lack of a clear hierarchy in the current system has given rise to confusion and dispute where zone and policy area provisions appeared to be inconsistent.

PART 2 - ZONES AND SUBZONES

Remote Areas Zone

Desired Outcomes DO1: Energy Storage Facilities should be added to the list of activities that are desired in this zone.

Procedural matters / Notification: in paragraph (a), the words “less than” should be inserted before “2000m”, so that the notification requirement applies where the wind turbines are any distance closer than 2000m from the dwellings or zone boundaries (not just where the wind turbines are exactly 2000m away).

Table 4 – Relevant Provisions for Performance Assessed Development: Wind Farm (p68): In the list of General Development Policies that apply to wind farm developments, the draft Code lists Infrastructure and Renewable Energy Facilities [Visual Amenity] PO 2.1-2.3. Items 2.1(a), (b), (c), (e) and (f) are not applicable to wind farms as they relate to matters like screening using natural landforms, vegetation and mounding. These provisions are relevant to other forms of infrastructure and renewable energy developments so I do not suggest that they be removed from the code, but Table 4 for the Remote Areas Zone should apply only PO 2.1(d) and 2.2-2.3 to wind farm developments.

PART 3 - OVERLAYS

No comments

PART 4 - GENERAL MODULES

Infrastructure and Renewable Energy Facilities

Subject to the comments below, these provisions appropriately transpose the existing planning framework for windfarms into the format of the Planning and Design Code.

I also support the inclusion of planning provisions specifically for other forms of renewable energy and energy storage facilities (eg solar farms).

PO 2.2: The draft wording is perhaps overly prescriptive in terms of requiring screening “around the perimeter” as there may be many circumstances where screening from only one or two vantage points is appropriate, due to particular visual impact on, for instance, a residence or a public roadway. I suggest the wording be changed to:

“Substations, pumping stations, battery storage facilities, maintenance sheds and other ancillary structures incorporate vegetated buffers ~~around the perimeter~~ to reduce unreasonable adverse visual impacts when viewed from adjacent land.”

PO 4.2: The drafting of this provision could be read to assume that these facilities pose risks to public safety. I suggest a minor amendment to the wording as follows:

“Facilities for energy generating, power storage and transmission separated from dwellings, tourist accommodation and frequently visited public places (such as viewing platforms / lookouts) to reduce any risks to public safety from fire or equipment malfunction.”

PO 8.5: The reference to using recognition systems or physical markers in the minimising of risk to aircraft operations discounts the opportunity to use other methods to manage aircraft risk (including by location away from flight paths, or arrangements with aircraft operators to turn off or re-orient turbines to provide clear passage for firefighting or aerial spraying). The PO should be simplified to allow for any appropriate measures:

“Wind ~~turbine generators farms incorporate recognition systems or physical markers to~~ minimise ~~the~~ risk to aircraft operations.”

PO 9.1: There is potential for dispute or confusion regarding what land might be considered “of high environmental, scenic or conservation value”. It would be more appropriate to use an Overlay to limit development in identified areas of high environmental, scenic or conservation value than to use PO 9.1 to attempt to achieve this outcome. At the very least, PO 9.1 should include a reference to the manner in which such areas are publicly identified, rather than leaving it to the subjective opinion of the planning authority on a case by case basis.

PO 9.2: Wildlife corridors and habitat refuges may not be appropriate or necessary for all solar power facilities (as the need will depend on the size and layout of the facility, as well as the local fauna). On that basis, 9.2(a) should be amended to:

“(a) incorporating wildlife corridors and habitat refuges where appropriate;”

In the alternative, 9.2 could be reframed as follows:

“Solar power facilities ~~that assist with the~~ minimise restriction of movement of wildlife by:

(a) incorporating wildlife corridors and habitat refuges where appropriate; ~~and or~~

(b) avoiding the use of extensive security or perimeter fencing.

Renewable Energy Facilities (Hydropower): By using the words “Renewable Energy Facilities” in the heading, these provisions are limited in their application to facilities that use the gravitational thrust of water naturally falling from a height to generate electricity (eg, the Snowy Hydro scheme in NSW, various hydro power plants in Tasmania). There is limited opportunity for hydro power in SA. Instead, SA is likely to see pumped hydro facilities, which are energy storage facilities that use electricity that might be from renewable sources but might also be just from the electricity grid.

On that basis, it would be appropriate to change the heading “Renewable Energy Facilities (Hydropower)” to “Hydropower and Pumped Hydro”. In the alternative, the Code could define the land use “Hydropower

facility” (which is currently not defined) to include both a hydropower generation facility as well as a pumped hydro energy storage facility.

PART 5 - MAPPING

No comments

PART 6 – LAND USE DEFINITIONS

No comments

PART 7– ADMINISTRATIVE DEFINITIONS

No comments

PART 8 – REFERRALS TO OTHER AUTHORITIES OR AGENCIES

No comments

PART 9 — TABLE OF AMENDMENTS

No comments

Section three: Evaluation of this engagement

Please tell us if you agree or disagree with the following statements:

- 1. I feel well-informed about the proposed Planning and Design Code for the outback (land not within a council area).**

Strongly agree

If not, why not? What information was missing?

[Click here to enter text.](#)

- 2. The information provided on the new Planning and Design Code for the outback was clear and understandable and enabled me to take an informed view.**

Strongly agree

If not, what was unclear and how could we have made it easier to understand?

[Click here to enter text.](#)

- 3. I understand how the Planning and Design Code may affect me and/or my community.**

Somewhat disagree

[Submission form: Planning and Design Code in the outback \(land not within a council area\)](#)

If not, what further information would have been useful to better understand how you might be affected by the draft State Planning Policies?

Unclear how the Code may be different in the regional and metropolitan areas. Would have preferred the full draft to be available all at once so that differences are clear.

- 4. I understand how my feedback will be used in the preparation of the final Planning and Design Code for the outback (land not within a council area).**

Somewhat agree

If not, tell us how we can better communicate with you about how your feedback will be used.

[Click here to enter text.](#)

- 5. I feel that I have had a genuine and adequate opportunity to have my say on the proposed Planning and Design Code for the outback (land not within a council area).**

Strongly agree

If not, please tell us how we can improve our engagement with the community and what further opportunities you would like to have input.

[Click here to enter text.](#)

- 6. I would be willing to participate in future consultations related to the Planning and Design Code.**

Strongly agree

If not, please tell us what would prevent you from participating in future consultations related to planning policy.

[Click here to enter text.](#)