

	<h1>District Council of Cleve</h1>	Version No:	1
		Issued:	December 2012
		Next Review:	December 2015

Policy Name: **WIND FARM POLICY**

PURPOSE

South Australia is the Australia's largest producer of wind energy, with the highest installed capacity of wind energy facilities in the country.

Within the Eyre Peninsula, there are many locations which are suitable for future wind farm development, including within the area of the District Council of Cleve ("the Council").

As a result of:

- the development of mining in the Eyre Peninsula, which will require increased power supply;
- proposals to develop new transmission lines from Port Augusta into the Eyre Peninsula; and
- the fact that locations within the Council's area have already been identified as suitable for wind farms,

It is possible that wind farms will be developed within the Council's area.

This Policy intends to inform developers, land owners and the community generally of the legal controls and planning policies applying to wind farms, and (where relevant) the Council's position in respect of wind farm developments.

SCOPE

This Policy provides an overview of:

- relevant wind farm planning processes, including avenues for the community to be involved in wind farm decision making processes; and
- the role of the Council in assessing and determining development applications for wind farms; and
- Council's preferred outcomes for wind farm developments which impact on the Council's roads or infrastructure.

OVERVIEW OF PLANNING PROCESSES APPLYING TO WIND FARMS

The Development Act 1993 ('the Act') regulates all forms of development in South Australia. Before a wind farm can be constructed, the developer must obtain development approval from a "relevant authority". The Council is generally the "relevant authority" for wind farms in its area.

In circumstances where the Minister for Planning determines that it is appropriate or necessary for the proper assessment of a particular wind farm development, where it is of major environmental, social or economic importance, the Minister may declare that development to be a "major project". The Council is not the relevant authority for "major projects" in the area.

"Development Approval" is issued by the Council only after the following consents have been obtained:

- Development Plan consent (which can only be granted by a "relevant authority"); and
- Building Rules consent (which may be granted by a private certifier or a relevant authority).

The Council's Development Plan

The Council (through its delegate officers) or the Eastern Eyre Peninsula Regional Development Assessment Panel ("RDAP"), acting as the Council's delegate, must assess any development application against the relevant objectives and principals contained within its Development Plan. Neither the Council nor the RDAP can lawfully have regard to matters which are not relevant to its Development Plan.

The Council's Development Plan can be amended by the Council, or the Minister for Planning. Where the Council wishes to amend its own Development Plan, the amendment must be approved by the Minister.

On 19 October 2011, the Minister for Planning released the State-wide Wind Farms Development Plan Amendment for public Consultation and declared the DPA to commence interim operation for a period of 12 months (i.e. until 19 October 2012). This DPA inserts a number of provisions into the Council's Development Plan which are relevant to the consideration and assessment of wind farm development applications.

The Council's Development Plan can be accessed through the Council's website (www.cleve.sa.gov.au/page.aspx?u=354).

As a result of the DPA, principles relevant to wind farm developments which recognise the effect of wind farms upon the visual and scenic amenity of areas, were inserted into the Council's Development Plan. When assessing development applications for wind farm developments, the Council or the RDAP is legally obliged to have regard to all relevant provisions of the Development Plan in deciding whether to grant Development Plan consent.

Under the *Development Act* and *Development Regulations*, wind farm development applications, must be referred to the Environment Protection Authority. The Council or RDAP must have regard to the advice and recommendations of the EPA when determining a wind farm development application.

Further, depending on the proposed location of a wind farm, further referrals may occur to other statutory bodies in accordance with Schedule 8 of the *Development Regulations*, including the Commissioner of Highways and the Department of Environment and Natural Resources. Where such referrals are necessary, the Council or the RDAP must have regard to, and in some instances, must strictly adhere to, the recommendations and advice of those bodies.

Public notice categories

Within the Rural and Coastal Zones of the Council's Development Plan, wind farms, wind monitoring masts and ancillary development servicing those developments are **Category 2** developments provided that the base of any wind tribune is located two kilometres or more from:

- the boundary of the Council's area (except where that boundary adjoins Crown land which is contained within the Land Not Within A Council Area Coastal Waters Development Plan);
- a boundary of the Rural or Coastal Zone with any of the following zones:
 - Residential (Cleve) Zone;
 - Rural Fringe (Cleve) Zone;
 - Rural Living (Cleve) Zone;
 - Rural Living (Arno Bay) Zone;
 - Rural Living (Arno Bay) Sustainable Zone;
 - Country Township (Arno Bay) Zone;
 - Residential (Arno Bay) Zone;
 - Country Township (Rudall) Zone;
 - Country Township (Darke Peak) Zone.

In respect of Category 2 development applications, the Council will provide notice of the application to owners or occupiers of adjoining land. Persons notified of the development application are given an opportunity to:

- inspect the plans and documents lodged with the development application; and
- make a representation in support of, or objecting to the development application, within a statutory time frame of 10 business days

Persons who make a valid representation on a Category 2 development application may request to be heard in person by the RDAP on their representation. An applicant may appeal a decision to refuse a Category 2 development application. However, no appeal rights are granted to representors.

Proposed wind farm developments which do not meet the above requirements are **Category 3** developments.

The Council is obliged to provide personal notification of a Category 3 development application to:

- the owners or occupiers of adjoining land; and
- owners or occupiers of land which, in the opinion of the Council, would be directly affected to a significant degree by the development if it were to proceed.

Further, the Council must also notify the public generally through the publication of a public Notice in the Eyre Peninsula Tribune.

Any person is able, in respect of a Category 3 development application to:

- inspect the plans and documents lodged with the development application; and
- make a representation in support of, or objecting to the development application, within a statutory time frame of 10 business days

Persons who make a valid representation on a Category 3 development application have a right to appear before the RDAP and be heard on their representation.

Where the Council or the RDAP approves a Category 3 development application, any representors who objected to the development application has a right to appeal the Council's decision in the Environment, Resources and Development Court.

Who Determines Wind Farm Development Applications?

The Council's Development Assessment Delegation Policy provides that wind farm development applications will be determined by the RDAP where:

- the application is categorised as a Category 2 or 3 development, representations have been received as a public notification process and objections raised by representors are not resolved; or
- where the application is determined by the Council to be complex or controversial in nature; or
- where the application is of a significant, social, economic or environmental interest, and the Chief Executive Officer of the Council or the Manager Development Services decides to refer the application to the RDAP on this basis.

All other development applications are determined by Council staff acting under delegated authority.

THE ROLE OF THE COUNCIL IN RESPECT OF WIND FARM DEVELOPMENT APPLICATIONS

The role of the elected body of Council in respect of wind farm development application is limited. The Council is legally obliged by the *Development Act* to delegate its development assessment powers to Council staff and/or the RDAP.

Under the Minister's Code of Conduct under Section 21A of the *Development Act 1993*, delegates of the Council and RDAP members (including elected members of the Council who are appointed to the RDAP) are required to act in an impartial manner in respect of actual or potential development applications and to this end, the Code restricts delegates and RDAP member from:

- discussing actual or proposed development applications with developers or members of the community outside of a formal RDAP meeting;
- speaking to the media about actual or proposed development applications;
- speaking at public meetings for or against proposed developments; and
- engaging in any act or omission which may give rise to a reasonable presumption that the person has prejudged an actual or proposed development application.

A copy of the Minister's code is available from the South Australian Government Website, <http://www.sa.gov.au/>.

The Council, as a corporate entity, is bound by decisions made by its delegates and by the RDAP. To this end, neither its staff nor its elected members can influence the outcome of planning decisions.

If a decision of the RDAP or the Council is appealed by an applicant or a representor, the Council is legally bound to defend this decision in any appeal to the Environment, Resources and Development Court.

RELEVANT PLANNING CONSIDERATIONS FOR WIND FARM DEVELOPMENT APPLICATIONS

Under the Council's Development Plan, the following are some of the relevant planning considerations against which a wind farm development application must be assessed:

1. Management of the visual impact of wind farms upon scenic areas
 - (a) Within the Council's area there are many areas of picturesque farm land and coastal areas with high landscape values. The visual impact of wind turbines on areas of high landscape value must be adequately addressed by applications.
 - (b) To this end, Council-wide Principle of Development Control 156(a) of the Council's Development Plan provides that wind farms should be sited, designed and operate so as to manage their visual impact by achieving the following:
 - i. a setback of at least 1 kilometre of a wind turbine from a dwelling that is not associated with the development;
 - ii. vegetated buffers to mitigate short to medium range visual impacts;
 - iii. regular spacing of wind turbines in open/flat landscapes where vegetation is orderly;
 - iv. irregular spacing of wind turbines in hilly/rugged landscapes where vegetation is varied;
 - v. ensure that blades on wind turbines rotate in the same direction
 - vi. ensure that all wind turbines have uniformity in terms of colour, size and shape;
2. Impacts on areas of native vegetation, conservation, the natural environment, geological, tourism or built or natural heritage significance
 - (a) Council-wide Principle of Development Control 156(b) of the Council's Development Plan provides that wind farms should be sited, designed and operated to avoid or minimise the potential for adverse impact on the above areas or places.
3. Impacts on nearby property owners and/or occupiers, road users and wildlife
 - (a) Council-wide Principle of Development Control 156(c) of the Council's Development Plan provides that wind farms should be sited, designed and operated to avoid or minimise the following impacts on nearby property owners and/or occupiers:
 - i. shadowing, flickering, reflection or blade glint impacts;
 - ii. excessive noise;
 - iii. interference with television and radio signals;
 - iv. modification of vegetation, soils and habitats;
 - v. striking of birds or bats.

In respect of noise issues, the Council or the RDAP will generally rely upon the advice and recommendations of the EPA as it will, in the course of its referral, assess a proposed wind farm development against the provisions of the *Environment Protection (Noise) Policy 2007*.

To this end, an applicant will generally be required to provide to the Council, the RDAP or the EPA a report from an appropriately-qualified acoustic engineer confirming that the wind farm will not contravene noise levels prescribed by the EP (noise) Policy.

In terms of the other impacts listed above, the Council or the RDAP may require that the applicant provide to it expert reports confirming that those impacts are avoided or minimised.

If the Council or the RDAP is not satisfied that the above impacts are adequately avoided or minimised, a wind farm development application may be refused.

COMMUNITY CONSULTATION

Although the Council cannot direct the manner in which a development application is formulated and lodged, the Council strongly recommends that developers proposing to seek development approval for wind farm developments prepare detailed reports on their proposal prior to lodgement of their development application and consider the result of community consultation.

Wind farm developments are often controversial, and have been the subject of appeals in the ERD Court. There are concerns held amongst the community that wind farms may result in adverse health effects. This concern, combined with other legitimate planning concerns, can result in many objections being lodged to a wind farm development.

To this end, community consultation undertaken prior to lodgement of a wind farm development application may resolve potential objections and may, therefore, increase the possibility that a wind farm development application will be approved by the Council or the RDAP.

THE ROLE OF THE COUNCIL AS THE OWNER OF ROADS AND OTHER PUBLIC INFRASTRUCTURE

The Council is the owner of most roads and a considerable amount of public infrastructure within its area.

Where wind farm developments require upgrading of roads and/or infrastructure, the Council may require that developers enter into bonding agreements in respect of these works.

Further, where Council roads or infrastructure are damaged as a result of the construction of wind farms developments, or otherwise in their continued operation, the Council has various powers under the *Local Government Act 1999* to recover the costs of repairing that damage from the developer.

In order to ensure that these issues are dealt with in a proactive, rather than reactive, manner the Council strongly encourages wind farm developers to enter into agreements with the Council prior to the construction of a wind farm.

COMPLIANCE ISSUES

The Council is responsible for ensuring that all development within its area is undertaken in a manner consistent with the *Development Act*. To this end, the Council will respond to complaints made about wind farm developments in a timely fashion.

If a wind farm development is not maintained or operated in accordance with the *Development Act* and any conditions applying to a development approval issued by the Council, the Council will consider undertaking formal enforcement action under that Act to resolve the breach.

Noise complaints related to wind farms are the responsibility of the Environment Protection Authority under the *Environment Protection Act 1993* and the *Environment Protection (Noise) Policy 2007*.

OTHER RELEVANT LEGISLATION APPLYING TO WIND FARMS

The following legislation, which is not administered by the Council, may be relevant to wind farms:

- *Aboriginal Heritage Act 1988*, where a proposed wind farm may affect an Aboriginal Heritage site, or where Aboriginal objects or remains are discovered during the construction of a wind farm;
- *Climate Change and Greenhouse Emissions Reduction Act 2007* which encourages the increased development of wind farms in South Australia;
- *Environment Protection Act 1993*, where a wind farm exceeds noise limits under the *Environment Protection (Noise) Policy 2007* or otherwise results in environmental harm;
- *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth), where a proposed wind farm may affect a World Heritage Site, a National Heritage Place, a wetland or international importance, a nationally threatened species or migratory species;
- *Native Vegetation Act 1991*, where a proposed wind farm development may require the clearance of, or otherwise impact on native vegetation;
- *Natural Resources Management Act 2004* where the wind farm may impact on natural resources or a Natural Resources Management Plan created under the Act.