



STATE  
PLANNING  
COMMISSION

# PLANNING AND DESIGN CODE IN THE OUTBACK TECHNICAL ADVICE REPORT

Pursuant to Section 22(2)(c) of the *Planning,  
Development and Infrastructure Act 2016*



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# 1 Purpose of the report

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This report has been prepared by the State Planning Commission (the Commission) for consideration by the Minister for Planning in adopting the Planning and Design Code for application to land not within a council area – now known as the Outback Code. It has been prepared in accordance with the functions afforded to the Commission pursuant to section 22(2)(c) of the *Planning Development and Infrastructure Act 2016* (the Act) where it may provide additional advice in the making of any instruments under the Act.

It is to be considered in partnership with the Commission's report on the outcomes of the engagement and consultation activities undertaken during the public consultation period for the draft Outback Code prepared in accordance with the requirements prescribed in section 73(7) of the *Planning Development and Infrastructure Act 2016* and *Practice Direction 2 Consultation on the Preparation of a Designated Instrument 2018*.

The purpose of this report is to provide recommendations for technical amendments to the draft Outback Code based on investigations undertaken by the Commission with the assistance of the Department of Planning, Transport and Infrastructure (the Department) to ensure it guides development assessment in line with the expectations of the Act, the various Planning, Development and Infrastructure Regulations (the Regulations) and commonly accepted principles of policy construction.

The recommendations relate to:

- **The Rules of Interpretation section** – including amendments to terminology, assessment pathways and the introduction of the concept of designated performance features to assist a relevant authority to interpret performance outcomes.
- **Technical structural features** – including classification tables, requirements for accepted development tables, and relevant provisions for both performance assessed and restricted development.
- **Referral triggers** – more work is required with state agencies to further consider how referral triggers can be affectively incorporated in Code policy.
- **Improvements to policy content** – including the identification of new Overlays (Water Protection; Airport Building Heights (Regulated) and Airport Building Heights (Aircraft Landing Areas)) and refinement of draft Overlays; classification of development to assessment pathways; and the inclusion of a public notification trigger in all zones.

If the Minister agrees with the recommended changes to the draft Outback Code released for public consultation that are contained within this and the Engagement Report, the Minister may adopt the updated Outback Code attached.

## 2 Introduction

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The Commission has been established as the state's independent, principal planning body that provides advice and makes recommendations on the administration of the *Planning, Development and Infrastructure Act 2016* (the Act). The Commission guides decision-making of state government, local government and community and business organisations with respect to planning, development and infrastructure provisions in South Australia

Section 22(2)(c) of the Act provides the Commission with a function that includes providing advice with respect to the making of instruments under the Act – including the Planning and Design Code (the Code). Section 65 of the Act makes the Commission responsible for preparing the Code – for the adoption of the Minister.

The Code will become a cornerstone of the new planning system that is progressively being created and implemented in accordance with the Act. The Code will consolidate the planning rules contained in South Australia's 72 Development Plans into one state-wide rulebook. Coupled with an ePlanning solution, the Code will make it simpler and easier for anyone to access planning rules, thereby enabling a more efficient and useable planning system.

On 5 February 2019, the Commission reached a milestone in the preparation of the inaugural Code when it released a proposed Code for application to land not within a council areas for public consultation. Land not within a council area was chosen by the Commission as the first stage of a three-phase implementation approach for the Code and the new planning system generally.

Whilst consultation on the draft Outback Code ensued, the Commission, with the assistance of the Department of Planning, Transport and Infrastructure (the Department), continued investigations into technical aspects of the Code.

This report provides the Minister with advice regarding the findings of these technical investigations, to assist the Minister with deliberation on whether to adopt the draft Outback Code released for consultation as amended.

This advice is separate from and in addition to the advice provided by the *Planning and Design Code in the Outback Engagement Report* (the Engagement Report) the Commission provided the Minister pursuant to section 73(7) of the Act. Together, the Engagement Report and this technical advice document provide rounded recommendations regarding the final Outback Code that the Commission sees should be adopted by the Minister.

The advice from both this document and the Engagement Report have been incorporated into an updated version of the Outback Code.

## 3 Technical Adjustments

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The Commission, with the assistance of the Department, continued work on the draft Outback Code through the course of the formal consultation period to consider how technical features of the Code could generally be strengthened and refined to ensure it guides development assessment in line with the expectations of the Act, the various Planning, Development and Infrastructure Regulations (the Regulations) and commonly accepted principles of policy construction.

Through these investigations, the Commission identified opportunities to strengthen and refine the following parts of the draft Outback Code:

- The *Rules of Interpretation* section.
- Technical structural features.

These opportunities, and the recommendations they lead to, are discussed and identified below.

### 3.1 Rules of Interpretation

Part 1 of the draft Outback Code, *Rules of Interpretation*, articulates a number of rules regarding usage of Code policy in a development assessment context that are not provided by the Act nor the various Planning, Development and Infrastructure Regulations (the Regulations) in operation and draft form as at the time of the draft Outback Code being released for consultation.

A key change recommended to this section is the introduction and description of the concept of a 'designated performance feature' (DPF). The updated Rules of Interpretation section of the Code describes a DPF as follows:

*In order to assist a relevant authority to interpret the performance outcomes, in some cases the policy includes a standard outcome which will generally meet the corresponding performance outcome (a designated performance feature or DPF). Without derogating from the need to assess development on its merits against all relevant policies, a DPF provides a guide to the relevant authority as to what is generally considered to satisfy the corresponding performance outcome but does not derogate from the discretion to determine that the outcome is met in another way.*

In effect, a DPF is what a deemed-to-satisfy (DTS) requirement becomes in a Performance Assessment pathway. Therefore, if this change is given effect, DTS requirements will serve a dual purpose in that:

- They will be a critical ingredient of the DTS classification task (in order for a proposal to qualify for classification the DTS pathway, it must meet all applicable DTS requirements).
- Where a proposal cannot be classified as DTS (for want of meeting all DTS requirements – or for want of there being a DTS requirement for all policies that are applicable), any available DTS requirements are to be considered as DPFs and will assist a relevant authority interpret a corresponding performance outcome.

Introducing the concept of DPFs to the Outback Code necessitates change to all Zones, Overlays and General Development Policy modules therein. This is observed in the headers of the various tables within the Zones, Overlays and General Development Policy modules of the updated Outback Code attached.

Other changes recommended to the *Rules of Interpretation* articulate:

- How the Code “classifies” development into the Accepted, DTS and Restricted assessment pathways (noting that development “defaults” into the Performance Assessment pathway where it is not otherwise classified by the Code).
- When and how Desired Outcomes, Performance Outcomes and DTS requirements (in addition to DPFs) are to be used in development assessment.
- The policy hierarchy – i.e. what policy prevails in cases of apparent policy conflict (Overlay policy prevails over Zone, Sub-zone and General Development Policy in cases of apparent conflict; and Sub-zone policy prevails over Zone and General Development Policy in cases of apparent conflict).
- How the referral triggers in the Code interact with section 122 of the Act and the Regulations.

These changes will bring the Code into greater alignment with the Act.

### 3.2 Technical Structural Features

The following tables, contained in Zones, were key mechanical components of the draft Outback Code:

- **Classification tables** – which identify types of development that can be Accepted and DTS and will be Restricted in a Zone.
- **Requirements for Accepted Development Tables** – which identify the requirements that need be satisfied for a development to qualify for the accepted development assessment pathway.
- **Deemed-to-Satisfy Requirements Tables** – which identify the DTS requirements that need be met in order for a development to qualify for the DTS assessment pathway.
- **Relevant Provisions for Performance Assessed Development** – which identify the performance outcomes that are relevant to specified types of development.
- **Relevant Provisions for Restricted Development** – which identify the Performance Outcomes that are relevant to development classified as restricted.

On review, it is seen that both the classification task and the identification of requirements task should be combined into individual tables – such that, for example, the Accepted Development Classification Table identify the types or classes of development that can be Accepted *and* the requirements that need be met for qualification of this assessment pathway.

Additionally, it is recommended Zones be reordered to better reflect the assessment procedure established by the Act. This procedure first involves classification of a development followed by assessment using the relevant provisions, as follows:

- Accepted Development Classification Table
- Deemed-to-satisfy Development Classification Table
- Applicable Policies for Performance Assessed Development Table
- Restricted Development Classification Table
- Assessment Provisions
- Procedural Matters

The *Development Classification* and *Requirements* tables have been combined to provide a single point of reference for development within each of these assessment pathways. These changes do not require or result in any amendment to individual policies.

These recommended changes are reflected in the updated Outback Code attached.

### 3.3 Referral Triggers

The draft Outback Code contained referral triggers. Triggers that have a spatial dimension were housed in certain Overlays. “Universal” triggers, that relate to specific development types no matter where they are proposed in South Australia, were located in Part 8 of the draft Outback Code.

The referral triggers were written in such a way as to identify the policies within the Code that a particular Agency would use in providing advice on a development application. This approach is supported by section 122(a) of the Act, which provides that the Governor must be satisfied that “provisions about the policy or policies that the body will seek to apply in connection” with the referral, unless the Minister is satisfied that such a policy is not necessary or appropriate.

Some reservations were expressed by Agencies in relation to the draft Outback Code identifying Code policies that they are to use in providing advice on development applications that trigger referral. To enable these reservations to be considered further, it is recommended that the Outback Code refrain from identification of policy for the subject purpose.

## 4 Policy Adjustments

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During the course of public consultation on the draft Outback Code, the Commission, with the assistance of the Department, continued to consider how the policy content of the draft Outback Code could be improved. This work is important for the second and third phases of the Code implementation strategy; indeed, this work will continue for as long as the Code operates.

### 4.1 Overlays

The Commission has identified:

- The need for an additional Overlay to effect appropriate development control in land outside council areas.
- Opportunities to refine Overlays included in the draft Outback Code to see these provide clearer guidance to relevant development.
- Opportunities to improve Overlay mapping contained in the draft Outback Code.

#### 4.1.1 Water Protection Overlay

A number of Water Protection Areas declared under the *Environment Protection Act 1993* exist in South Australia. Under the *Development Act 1993* and the *Development Regulations 2008* any application proposing to undertake development of composting works, wastewater treatment works, feedlots, piggeries and dairies in these areas is an activity of major environmental significance and must be referred to the Environment Protection Authority (EPA) for direction. It is proposed that this arrangement continue into the new planning system and that the Code's role in this be effected through an Overlay.

A small Water Protection Area has been identified outside of council areas near Penong. The draft Outback Code did not, however, contain an Overlay to guide development in this area nor house a referral trigger to the EPA in relation to any proposal to develop the abovementioned land uses. This gap should be addressed. Accordingly, it is recommended that a Water Protection Overlay be incorporated into the Outback Code.

#### 4.1.2 Airport Building Heights (Regulated) and Airport Building Heights (Aircraft Landing Areas) Overlays

The draft Outback Code contained a single Overlay, *the Building Near Airfields Overlay*, to guide development in proximity to airfields. The policy content of this Overlay was quite broad due to precise information regarding building height limits around the various types of airfields outside of council areas (and near to these areas) not being available.

Through continued work with the aviation unit of the Department, additional clarity regarding these building height limits has been accessed. This consequently supports further definition being incorporated into the Code in relation to this matter.

There are two different types of airfield outside of council areas and near to these areas:

- Airfields that are registered / certified under the Civil Aviation Regulations – such as those serving Olympic Dam and Leigh Creek / Copley.
- Airfields that aren't registered / certified under the Civil Aviation Regulations – such as those serving Innamincka and Marree.



It is recommended an *Airport Building Heights (Regulated) Overlay* is incorporated into the Code to provide guidance regarding building heights around the former of the above airfields and an *Airport Building Heights (Aircraft Landing Areas) Overlay* be incorporated into the Code to provide such guidance around the latter.

Both Overlays will need to contain a generic Performance Outcome related to height sourced from the *Building Near Airfields Overlay* within the draft Outback Code.

The *Airport Building Heights (Aircraft Landing Areas) Overlay* can have the following deemed to satisfy requirement complementing the above Performance Outcome:

*The distance from any part of the runway centreline to the closest point of the building is greater than 30 times the height of the building.*

The *Airport Building Heights (Regulated) Overlay* can have the following additional Performance Outcome and corresponding deemed to satisfy requirement (respectively)

*Development is adequately separated from airfields to minimise the potential for building generated turbulence and windshear.*

*The distance from any part of the runway centreline to the closest point of the building is greater than 35 times the height of the building.*

### 4.1.3 Sloping Land Overlay

The draft Outback Code contained a *Sloping Land Overlay*, the policy content of which provides guidance regarding how development should respond to slope.

Policy regarding how specific land uses should respond to slope (commercial forestry, horse keeping, landfill and organic waste processing facilities in particular) was included in this Overlay. As a consequence of this, spatial application of the Overlay was informed by the minimum slope referred to in this policy – namely, a DTS requirement 7.1 for landfill operations (which references a slope of 1:10). This led to overly extensive spatial application of the Overlay.

In retrospect, policy regarding specific land uses should not have been included in this Overlay. In fact, this was inconsistent with a general principle informing construction of the Code – being that land use specific policy should be contained within the relevant land use specific General Development Provisions policy module.

It is recommended that all land use specific policy within the Sloping Land Overlay be relocated to the appropriate land use specific General Development policy module. Doing so results in the minimum slope referenced by this Overlay being 1:4. This is considered a more practical slope informing spatial application of the Overlay. This is reflected in the updated Outback Code attached.

## 4.2 Classifications of Development to Assessment Pathways

Effort was made by the Commission, with the assistance of the Department, to incorporate as many DTS requirements into the draft Outback Code as reasonably possible. This was in keeping with the objective to provide as many deemed to satisfy pathways for low risk development as possible.

Recognising the gravity of classifying development as deemed-to-satisfy (any development that achieves deemed-to-satisfy classification must be granted planning consent by the relevant authority), the Commission sought review of the DTS requirements within the draft Outback Code.

The review reinforced the Commission's position that DTS requirements must be objectively ascertainable. That is, they must be free of ambiguity and not require assessment that is open to different findings.

Not all of the DTS requirements contained in the draft Outback Code can be said to be objectively ascertainable. In some instances it is possible to change these requirements to make them objective ascertainable – in some instances it isn't.

Within the updated Outback Code attached DTS requirements have either been amended to be objectively ascertainable or deleted where this cannot be achieved.

Going forward, it is recommended that investment be made in supporting the development of DTS requirements. In some instances this will demand investment into the development of supporting spatial information (for instance, requirements regarding building levels that should be adopted to avoid unacceptable hazard from flood); in others, it demands engagement with interested stakeholders on acceptable quantitative requirements regarding a specific matter (for instance, private open space dimensions for various dwelling types).

The Commission will continue to invest energy and time into this important part of the Code over the remaining two implementation phases.

### 4.3 Public Notification Triggers

Schedule 9 of the *Development Regulations 2008* prescribes, to a large degree, that development of a site that adjoins land in a different Zone triggers public notification. In the new planning system, requirements of this type need to be housed in the Code if they are to continue operation.

The draft Outback Code did not contain a public notification trigger equivalent of this type. The Commission considers it prudent that it contain such a trigger. Accordingly, the Commission recommends the following public notification trigger be included in all zones:

*All classes of performance assessed development is excluded from notification except where they involve any of the following:*

- (a) *the site of the development is adjacent land to land in a different zone...*

## 5 Conclusion

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The advice from both this document and the Engagement Report have been incorporated into an updated version of the Outback Code (Attachment 1). Given the breadth and complexity of the draft Outback Code, the creation of this document provides a much clearer way of communicating the changes the Commission recommends be made to the draft Outback Code.

If the Minister is of the opinion that the changes recommended by both the Technical Advice and the Engagement reports, the Minister may adopt this document as the Planning and Design Code for application to land not within a council area.

