



Review of the draft Environment Protection (Commercial and Industrial Noise) Policy 2022

Consultation summary report



Draft Environment Protection (Commercial and Industrial Noise) Policy 2022 – Consultation summary report

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Abbreviations

AS	Standard (published documents from Standards Australia)
AS 1055–2018	<i>Acoustics – Description and measurement of environmental noise</i>
dB(A)	decibels (with 'A' weighting applied)
EPA	South Australian Environment Protection Authority
EP Act	<i>Environment Protection Act 1993</i>
EPP	environment protection policy
GED	general environmental duty
INF	indicative noise factor
INF Guidelines	Indicative noise factor guidelines
INL	indicative noise level
LGA	Local Government Association
LNLC Act	<i>Local Nuisance and Litter Control Act 2016</i>
Noise Policy Guidelines	Guidelines for the use of the Environment Protection (Noise) Policy 2007
Noise Policy	<i>Environment Protection (Noise) Policy 2007</i>
Commercial and Industrial Noise Policy	Environment Protection (Commercial and Industrial Noise) Policy 2022
Planning Code	Planning and Design Code
PLUS	Planning and Land Use Services
PDI Act	<i>Planning Development and Infrastructure Act 2016</i>
SAPOL	South Australia Police
WHO	World Health Organization

Executive summary

During 23 September to 23 November 2022, South Australians were invited to engage with the EPA and provide feedback on the draft Environment Protection (Commercial and Industrial Noise) Policy 2022. This was Stage 3 of the consultation undertaken as part of the review of the existing *Environment Protection (Noise) Policy 2007* (Noise Policy).

This report provides a brief history of noise regulation in South Australia along with the Noise Policy review process and summarises the feedback received from Stage 3 of consultation. This report is published in accordance with section 28(9) of the Environment Protection Act 1993 (EP Act) which requires the EPA to prepare a response to submissions received during consultation to amend an environment protection policy.

The consultation was held across a range of different channels to ensure that feedback methods were accessible to a wide variety of stakeholders. At its close on 23 November 2022, the EPA received 33 submissions by email and through an online survey. Submissions were received from local government, members of the acoustic industry, consultants, government departments, a prescribed body listed under section 9 of the *Environment Protection Regulations 2009* in accordance with section 28(5) of the EP Act and from interested individuals. The EPA appreciates the feedback and suggestions which will be used to inform the final policy.

Well-received policy changes

Stakeholders were generally pleased to see the draft policy proposes to align with modern planning legislation including the *Planning Development and Infrastructure Act 2016* and the current framework of the Planning and Design Code. At large, stakeholders appreciated the introduction of the 'Indicative Noise Level Guidelines' for the *Environment Protection (Commercial and Industrial Noise) Policy 2022*. Stakeholders agreed these guidelines would remove ambiguity when determining indicative noise levels and significantly limit the potential for any misinterpretation of the relevant 'Land Use Category' which applies to a given zone or subzone.

Some stakeholders endorsed the introduction of 'intermittency' as a new annoying noise characteristic. While others question the need for the introduction and how this would function operationally with the existing modulating characteristic, stakeholders generally supported the inclusion of technical updates of standards and guidelines.

Main issues raised

Removing frost fans from the policy

Many stakeholders raised concerns regarding the removal of frost fans (Division 5 of existing policy) and the consequences this brings to noise generated from frost fans. Stakeholders voiced the existing policy mandates noise levels and operational requirements for frost fan installations. Stakeholders voiced the frost fan requirements were established to specifically consider a range of factors unique to frost fans and their operation. They stated the provisions provide a clear and concise set of rules used by many stakeholders. Feedback noted the removal would mean each local government area could determine their own approach to regulate frost fan noise, including potentially changing the assessment process from an objective standard to a subjective assessment.. Stakeholders were concerned this could then introduce disparity and inequality across different growing regions. They were also uncertain what this would mean retrospectively for existing frost fans.

Removal of Part 6 from the existing policy

During the consultation several stakeholders raised concerns regarding the proposed removal of Part 6. In particular councils stated this would result in local government subjectively assessing noise from sources previously included in Part 6 of the existing policy. Some councils raised concerns regarding the qualifications needed to undertake assessments. Councils questioned whether they would need to employ consultants to undertake such assessments to ensure they are admissible in court.

Confusion around what applies under the policy

Some stakeholders remained unsure regarding whether construction noise and noise from public infrastructure works were under the remit of the policy. Further, stakeholders were unsure if machine noise from schools, childcare centres and churches were still subject to the policy given the draft amendments to Schedule 1.

Introduction of intermittent noise characteristic

Stakeholders were unclear why a new characteristic for intermittent noise is required and sought further information from the EPA for examples of how this could operationally be applied. Several submissions were concerned the introduction of the intermittent noise characteristic would result in a noise source being subject to both modulation and intermittent penalty characteristics. It was questioned whether this could result in an 8dB(A) penalty being applied instead of 5dB(A). Stakeholders also questioned whether the intermitted characteristic could be applied retrospectively.

The EPA's response to feedback received is detailed in Part 5 of this report.

Summary of recommended policy changes and further considerations

After reviewing the information received from the 33 submissions, the EPA will recommend the following:

- retain Division 5 'Frost Fans' in the final version of the policy
- change the term 'Designated Area' to an independent term from the Planning and Design Code, and to consider using the term 'Noise Designated Area'.
- further review the definition of a noise source to see if improvements can be made
- further review the term 'relevant land use' to see if improvements can be made
- consider including reference to the 'Guide to the Planning and Design Code' in clause 4 when determining land use category or categories which would apply to a Designated Area.
- remove the word 'uncertainty' from clause 4(5) for all zones and subzones as the purpose of the 'Indicative Noise Level Factor Guidelines' is to remove uncertainty
- change the name of the 'Indicative Noise Level Guidelines' to 'Indicative Noise Factor Guidelines'
- consider changes to the term intermittent and modulating characteristic to ensure minimal overlap based on the feedback received
- further consider Schedule 1 to provide clarity to users of the policy for what noise sources are subject to the policy
- add the following provision to clause 11(3) and 11(5) of the policy 'a measurement place should be inside with windows closed if a building incorporates acoustic treatment'
- add changes to the Indicative Noise Factor Guidelines as detailed in responses 12 and 13 of this report.

1 Introduction

1.1 Harm resulting from noise

Noise is a significant issue identified by the World Health Organization (WHO). Excessive noise can interfere with daily activities at work, home, school and during leisure time. Furthermore, noise can cause significant sleep disturbance. As a result, excessive noise can seriously harm human health¹.

There are some groups that are more vulnerable to noise than others. Chronically ill and elderly people are more sensitive to sleep disturbance. Children can be disproportionately affected by noise. Early childhood development and education can be impaired by noise, resulting in lifelong effects on academic achievement and health. Shift workers, due to their sleep pattern being under stress, are also especially vulnerable. People of lower socio-economic status are often less able to live in quiet residential areas and have less capacity to insulate homes. Noise nuisance at night can cause financial stress due to increased medical visits and drug purchases².

1.2 Background to noise regulation in South Australia

Prior to the introduction of the *Environment Protection Act 1993* (EP Act), noise in South Australia was regulated by the *Noise Control Act 1977*. With the introduction of the EP Act in 1995, this earlier Act was revoked and replaced with two separate regulatory policies:

- *Environment Protection (Machine Noise) Policy 1994*
- *Environment Protection (Industrial Noise) Policy 1994*.

By the late 1990s work commenced on replacing the two existing policies with one designed to balance the competing interests of those whose legitimate activities inherently caused noise, with the interests of and impacts on, people exposed to noise.

1.3 Introduction of the *Environment Protection (Noise) Policy 2007*

The current *Environment Protection (Noise) Policy 2007* (Noise Policy 2007) took effect in 2008.

The intent of the policy was to strike a balance between the interests of those whose legitimate activities cause noise, and the interests of those who are exposed to, and affected by, noise. It also sought to provide clarity and consistency in environmental noise regulation.

The existing policy considers social, economic and environmental matters in the management of noise issues. It achieves this by:

- ensuring protection against noise is in accordance with WHO guidance
- ensuring the issues that must be considered to inform decisions are clearly articulated
- providing for special or unique activities that are not adequately represented by general noise provisions in Part 6 of the Noise Policy

An environment protection policy (EPP) is one of a number of legislative tools available under the EP Act to address environment protection matters. An EPP can be made for any purpose directed towards securing the objects of the EP Act. This may include setting out requirements or mandatory provisions that are enforceable.

An EPP:

- has the force of a standard imposed by Parliament
- may impose mandatory provisions with penalties
- may be developed for a specific environmental issue (eg waste, water, air, noise).

¹ World Health Organization 1999, *Guidelines for Community Noise*, <https://apps.who.int/iris/handle/10665/66217>

² World Health Organization Regional Office for Europe 2019, *Data and statistics*, <http://www.euro.who.int/en/health-topics/environment-and-health/noise/data-and-statistics>

- providing a regulatory tool that reduces ambiguity for enforcement authorities, leading to an equitable approach for regulating noise
- responding to new and emerging noise issues through a streamlined policy amendment process.

The Noise Policy 2007 was developed to address noise produced from both domestic and non-domestic sources such as:

- air-conditioning units, pool pumps, power tools and lawn mowers
- burglar alarms
- premises associated with primary industry processing such as wineries, abattoirs, dairies and seed processing
- light industry premises such as motor vehicle repair shops
- commercial premises such as shopping centres
- industrial premises such as manufacturing and processing facilities.
- providing planning authorities with the framework for applying environmental standards

The Noise Policy 2007 provides planning authorities with the framework for applying environmental standards. It is proactive in seeking to minimise noise impacts through connections with the planning system to assess the suitability of certain types of development proposals and the need for any associated attenuation measures, in a noise context.

The policy is also used to regulate EPA licensed activities that have the potential to cause significant or widespread impact on the environment. In such cases, regulatory obligations determined under the policy are applied through licence conditions. This adds considerable regulatory weight to the policy. There are some limited circumstances where other regulatory agencies (eg Department for Energy and Mining) will utilise the policy in their work despite certain activities they regulate not being licensed by the EPA.

The EPA provides support to councils and other agencies for the assessment of noise when needed. It also sets policies and guidelines for industry and the community, and works closely with other organisations such as local councils and police to respond to community concerns about noise.

2 Draft Environment Protection (Commercial and Industrial Noise) Policy 2022

The Noise Policy 2007 has been in place for 15 years, suggestions to improve its operation have been raised over time. This along with the introduction of the following related legislation triggered the need to review the policy:

- 1 *Local Nuisance and Litter Control Act 2016* (LNLC Act) gave local government principal responsibility for the management of local nuisance issues, including noise nuisance from sources not licensed by the EPA. This has impacted both the way in which the policy operates and how nuisance noise is managed in South Australia.
- 2 *Planning Development and Infrastructure Act 2016* (PDI Act) which included the preparation of a single electronic Planning and Design Code to replace 72 development plans that applied under the *Development Act 1993* and was fully operational across South Australia during 2021.

Proposed changes to the Noise Policy 2007 will revoke the current policy and create a new 'Environment Protection (Commercial and Industrial Noise) Policy 2022' (Commercial and Industrial Noise Policy).

3 Consultation

3.1 Stage 1 – Initial consultation with key stakeholders

In accordance with principles of early engagement, the EPA conducted an initial consultation with key stakeholders in March 2017. This first stage of the review consisted of targeted engagement with 65 stakeholders to assist with framing the scope of the review.

The stakeholders were selected from the following areas:

- peak bodies and associations
- major mining companies
- SA and Commonwealth government agencies
- prescribed bodies identified in Regulation 9 (normal procedure for making policies) of the *Environment Protection Regulations 2009*.

A total of 18 written submissions were received during Stage 1.

3.2 Stage 2 – Consultation on the discussion paper for the review of the *Environment Protection (Noise) Policy 2007*

The feedback from Stage 1 formed the discussion paper for consultation³ released in May 2020. Consultation on the discussion paper ran for 10 weeks from May to July 2020 and resulted in 32 submissions being received. The [consultation summary report](#) which includes both feedback and the EPA's response and recommendations is available on the EPA website.

3.3 Stage 3 – Consultation on the new draft Environment Protection (Commercial and Industrial Noise) Policy 2022

On 23 September 2022 the EPA opened public consultation on the draft Environment Protection (Commercial and Industrial Noise) Policy 2022 (Commercial and Industrial Noise Policy). Consultation was open for a two-month period in accordance with section 28(6) of EP Act and closed on 23 November 2022.

The following stakeholder engagement activities were undertaken during the public consultation period:

- Two virtual information sessions, the first on 6 October 2022 with 23 registered attendees and the second on 18 October 2022 with 52 attendees.
- One in-person session on 13 October 2022 with 15 attendees at the EPA offices.
- EPA website content was published including FAQs and social media posts.
- The EPA published a media release on the draft policy on 23 September 2022.
- Two gazette notices were published, the first provided notice of the EPA's intent to amend the policy on 16 June 2022 in accordance with section 28(3) of the EP Act and the second was published on 23 September 2022 in accordance with 28(6) of the EP Act. A copy of the second gazette notice was also published in *The Advertiser* newspaper on 23 September 2022 in accordance with section 28(6). The Advertiser wrote an article on the draft policy on 24 September 2022.
- EPA staff were interviewed on the proposed changes during local radio segments.
- *EPA Monitor* newsletter article was circulated to subscribers which included licence-holders on 29 September 2022.

³ Environment Protection (Noise) Policy 2007 – Discussion paper for consultation, https://www.epa.sa.gov.au/files/15371_noise_policy_consultation_summary_report_2022.pdf

- A newsletter article distributed in the Local Government Association of South Australia sectorwide 'round-up email' on 3 October 2022.
- EPA staff delivered a presentation to over 25 members of the Australian Acoustical Society on 18 October 2022.
- Stakeholders who gave feedback during Stages 1 and 2 of the consultation were invited to provide feedback on the draft policy.
- The EPA referred the draft policy to prescribed bodies listed under section 9 of *the Environment Protection Regulations 2009* in accordance with section 28(5) of the EP Act.
- Potentially interested stakeholders were invited to have their say on Stage 3.

A total of 33 submissions were received during the consultation with 24 directly emailed the EPA and nine submitted via an online survey link. A list of stakeholders who submitted feedback can be found in [Appendix 1](#).

4 Proposed policy changes subject to Stage 3 public consultation

Table 1 summarises the proposed changes to the policy which were released for public consultation under Stage 3. A detailed report explaining the purpose and effect of the proposed changes is detailed in the [explanatory report](#) published on the EPA website.

Table 1 Proposed changes to the Environment Protection (Noise) Policy 2007

Proposed change	Purpose and effect
Create independent Noise Policy definitions	<p>Purpose: It is proposed the current term 'locality' is changed to 'designated area', a distinctly different term with a similar meaning. This is to ensure the term applied under the new policy is independent of the term 'locality' currently used in the PDI Act and the Planning and Design Code.</p> <p>Effect: This change will add clarity to the application of provisions.</p>
Include 'intermittency' as a new additional noise characteristic	<p>Purpose: Intermittent noise can increase the nuisance caused by excessive noise when compared to steady or continuous noise. To bring South Australia in line with other interstate policies that regulate noise, it is proposed 'intermittency' is included as a noise characteristic that attracts a penalty based on specified characteristics (ie modulating, tonal, etc).</p> <p>Effect: This change will add further clarity to the assessment of noise under the policy.</p>
Align the Commercial and Industrial Noise Policy with current planning legislation	<p>Purpose: The existing policy operates both within, and outside of the planning system. The policy makes direct reference to <i>the Development Act 1993</i> which has been superseded by <i>the Planning Development and Infrastructure Act 2016 (PDI Act)</i> and the Planning and Design Code. It is proposed the draft policy is changed to reference current planning legislation.</p> <p>The draft policy clarifies the EPA as the 'Authority' will determine the relevant land use under the policy in consultation with the State Planning Commission. This will provide greater procedural guidance.</p> <p>Additional wording was added to clause 4 to refer to a new guideline (Indicative noise level guidelines for the Environment Protection (Commercial and Industrial Noise Policy 2022). This guideline provides pre-interpreted indicative noise levels for each designated area to provide certainty for users of the policy.</p> <p>Effect: The proposed change will ensure the draft policy references modern planning legislation. This will reduce ambiguity for the EPA, councils, developers, and the community.</p>
Technical updates	<p>Purpose: The existing policy references expired Australian and New Zealand standards and guidelines. It is proposed these references are updated in the draft policy which include:</p> <ul style="list-style-type: none"> replacing existing standards in clause 11(1) (clause 10(1) of the draft Commercial and Industrial Noise Policy) with reference to AS/NZ IEC 61672.1:2019: <i>Electroacoustics – Sound level meters Specifications</i> and replace clause 5(8)(a) standard with AS/NZS 2107:2016 <i>Acoustics – Recommended design sound level and reverberation times for building interiors</i> updating wording to correct current reference to superseded Wind farms environmental noise guidelines. <p>Effect: Referencing current standards and guidelines will ensure the draft policy follows best practice for measuring noise.</p>

Proposed change	Purpose and effect
Remove 'domestic noise' from the policy to avoid duplication of provisions with other legislation	<p>Purpose: <i>The Local Nuisance and Litter Control 2016</i> (LNLC Act) commenced in 2017. This Act regulates most nuisance issues from noise other than those emanating from sites licensed by the EPA. Local government is responsible for the management of local nuisance issues.</p> <p>With the introduction of the LNLC Act, it is proposed 'Part 6 Special noise control provisions' is removed from the draft policy to avoid duplication with LNLC Act nuisance provisions.</p> <p>Part 6 contains special and definitive controls for noise sources generally associated with activities involving residential land uses or 'domestic' uses including domestic pool pumps, rubbish collection services and building intruder alarms.</p> <p>Construction noise at most sites is regulated under the LNLC Act. However, if a subject site is already a licensed site under the EP Act, then any construction undertaken at this site will be managed through the environment protection licence in place of Part 6 of the existing policy (which is proposed for removal).</p> <p>Councils may choose to conduct measurements in accordance with the draft policy to support the subjective assessment of nuisance conducted under the LNLC Act.</p> <p>Clause 5(4) of the LNLC Act does not apply to noise generated in relation to an activity authorised by an environmental authorisation within the meaning of the EP Act.</p> <p>With the proposed removal of Part 6, the term 'mandatory provisions' is also removed.</p> <p>Effect: Removing Part 6 from the policy will ensure the draft policy does not duplicate nuisance noise provisions under the LNLC Act.</p>
Other minor updates to the policy	<ul style="list-style-type: none"> • Change reference of 'administering authority' to 'administering agency' to correct an existing error (referencing section 18 of the EP Act). • Remove reference to <i>Audible Bird Scaring Devices Environmental Noise Guidelines 2007</i> from the policy which is now regulated by the LNLC Act and council bylaws. • Change the wording of 'emergency vehicle sirens' to 'emergency vehicle sirens, fire alarms and other emergency alarms and devices' as this will broaden the definition to clarify noise from emergency alarms are not considered under the Noise Policy as they are regulated under the general environment duty in the EP Act. • Remove reference to noise sources that are not suitable to be measured under the draft policy (for example helicopter landing facilities) by deleting the wording 'as described in clause 8 of Schedule 1 of the Act' from Schedule 1(7) which infers that these activities, when below the licensing threshold, are measurable using the policy. This provides clarity that Schedule 1(7) noise sources are instead considered under the general environment duty. • Schedule 1(6) of the draft policy has removed reference to the following Acts: <ul style="list-style-type: none"> – Community Titles Act 1997 – Strata Titles Act 1988 – Residential Tenancies Act 1995. <p>These Acts are no longer relevant with the removal of Part 6 from the existing policy.</p> <ul style="list-style-type: none"> • Schedule 1(6) now reads 'Noise that may be the subject of proceedings under the <i>Liquor Licensing Act 1997</i>'. This Act has remained due to the relevance of commercial premises under the Act.

Proposed change	Purpose and effect
	<ul style="list-style-type: none"> • Schedule 1(6) of the existing policy has been removed. The provision states ‘Noise caused by dogs or other animals resulting from an activity at domestic premises. With the removal of Part 6 from the existing policy this provision is not needed to clarify what is excluded from the draft policy. • Split Schedule 1(3) ‘aircraft or railway noise’ into two separate dot points under Schedule 1 to provide clarity. • Remove the words ‘resulting from an activity at domestic premises’ from Schedule 1(1) for clarity. • Listed clause 5 under clause 7(1) which enables amendment of the policy for specified clauses to occur outside of the normal procedure (section 32 of the EP Act) • Text change in clause 13(3) from three or four characteristic to ‘three or more’ as this is due to the new addition of the intermittency characteristic under clause 3.1
Title change	Change title from ‘Environment Protection (Noise) Policy 2007’ to ‘Environment Protection (Commercial and Industrial Noise Policy) 2022’. The draft policy will not include ‘domestic’ noise as this is now dealt with under the LNLC Act.

5 Consultation feedback

Feedback raised by stakeholders during Stage 3 has been analysed and is discussed below.

5.1 Indicative noise factor guidelines

The draft 'Indicative noise level guidelines for the Commercial and Industrial Noise Policy' is referenced in clause 4(4) of the draft policy. As a result of the consultation, it is recommended the guidelines are referred to as the 'Indicative noise factor guidelines for the Environment Protection (Commercial and Industrial noise) Policy 2022' (INF Guidelines). The use of the word 'factor' better reflects contents of these guidelines as the purpose is to remove uncertainty when users of the policy are determining indicative noise factor of a 'designated area'.

It is understandable that there may be confusion between the terms 'indicative noise factor' and 'indicative noise level'. The **indicative noise factor** is the dB number derived based on the land use categories determined to apply to a 'designated area'. The **indicative noise level** is the noise goal level for noise source. The indicative noise level is calculated based on the 'designated area' of the noise source and the noise affected premises.

1: How did the EPA decide which land use categories would apply to each zone and subzone for the INF guidelines?

EPA response: The EPA allocated land use categories to designated areas by determining the land uses that are envisaged in each zone within the Planning and Design Code. This method is consistent with how land use categories are determined under the existing policy with reference to the Development Plans or the Planning and Design Code.

Further information on how land use categories are allocated to zones and subzones in the INF guidelines will be the 'Guidelines for the use of the Environment Protection (Commercial and Industrial Noise) Policy 2023' (Noise Policy Guidelines).

2: How have the land use categories changed between the existing and proposed policy?

EPA response: There are no proposed changes to the land use categories and their corresponding indicative noise factor.

3: Are the INF Guidelines enforceable?

EPA response: The INF Guidelines are a quick reference to assist users in determining relevant indicative noise levels for a situation, and are enforceable through the use through the use of environment protection orders under section 93 of the EP Act.

It should be noted both the method of calculating indicative noise levels (clause 5) and the process to follow when considering action for non-compliance consideration for the general provisions of the existing policy (Part 4) have not changed.

4: Can local government use the 'Indicative noise factor guidelines' when requesting acoustical reports for developments not referred to the EPA? Should these be built into recommendations for development? Should the INF Guidelines be mandated and mandatory for Planning and Design Code?

EPA response: The policy is both a planning assessment tool and a compliance assessment tool. The policy is referenced four times within the Planning and Design Code including *Performance Outcome 4.1 of Interface Between Land Uses in Part 4 General Development Policies*. This means meeting the requirements of the policy is a Deemed-to-Satisfy Criteria. This in turn makes the INF Guidelines applicable when undertaking development assessments (even those not referred to the EPA).

The EPA will liaise with the State Planning Commission to change the Planning and Design Code to reference the new policy if the Environment, Resources and Development Committee of the Parliament resolve to suggest an amendment to the policy.

5: For some situations the indicative noise levels (INL) may not be appropriate as they may be too stringent.

EPA response: The policy sets out a two-step process in determining if noise from a noise source is acceptable. The first step is a simple test based on noise levels and this is clause 17 of the draft policy 'Compliance with noise goals satisfies general environment duty'. The calculated INL sets a noise level at which compliance with the general environmental duty is met. The levels are not mandatory, and simply the first step in assessing noise.

If the INL levels are not met, the second step is a requirement to assess the issue based on other factors listed in the policy as required in clause 18 of the draft policy (or clause 19 of the existing policy). This allows the EPA to undertake a comprehensive assessment of any situation for both compliance and planning purposes. In some cases, the EPA as the Authority or an Administering Agency may determine noise levels above INL levels to be acceptable.

6: The EPA will need to ensure the INF Guidelines are regularly updated so that a comprehensive and complete list of subzones and zones aligns with the Planning and Design Code.

EPA response: A direct line of communication with the State Planning Commission and the Planning and Design Code team has been established to ensure the EPA is kept in the loop regarding changes to zones and subzones within the Planning and Design Code (Planning Code). The EPA will update the INF Guidelines promptly after changes to zones and subzones are made to the Code.

7: Some stakeholder raised the allocation of land use categories has not been determined with input from planners and that caution has been taken to preference residential land uses over commercial or industrial, resulting in the lowest possible criteria

EPA response: The consultation on the INF Guidelines is ongoing and the EPA is open to discuss the land use category determinations within the INF Guidelines. Clause 4(5) of the Commercial and Industrial however, confirms that the EPA is to make the final determination in consultation with the State Planning Commission. The policy determines these factors based on the envisaged character and objectives (land use rules) of the 'designated area' and not the individual land use within the designated area. During the consultation, the State Planning Commission has been consulted and provided feedback to the INF Guidelines. This is addressed in point 13 of this document.

8: There is no procedural guidance provided where a new zone or subzone requires an appropriate classification. What if there is a question of interpretation?

EPA response: The EPA is available for discussion or advice regarding the Noise Policy or INF Guidelines at any time. It will be an EPA priority to urgently update and maintain the INF Guidelines in response to any amendments to the planning code.

9: Why do you need the policy clauses defining how to arrive at a categorisation if there is a comprehensive EPA table which lists all of them anyway?

EPA response: For transparency and clarity, the policy details the process the EPA as the Authority uses to assign indicative noise factors to zones and subzones.

10: The draft policy restricts the assessment to zones and subzones and does not consider other concept plans or overlays.

EPA response: A designated area is defined within the policy as: an area to which the Planning Code applies (whether described in the code as a zone or subzone or otherwise) that is made subject to a set of land use rules by the provision of the code and not itself further divided by the code into areas that are made subject to separate sets of land use rules.

Overlays

The assessment provisions within the Overlay section of the Planning and Design Code are deemed not relevant to the land use considerations and will not be used to determine land use categories as required by the Noise Policy.

Concept plans

The *Guide to the Planning and Design Code* (June 2022) refers a concept plan as 'a visual expression of the desired development over time'. Furthermore, the document also notes that concept plans have 'limited relevance in

development assessment’ and ‘would be better represented by a ‘Technical and Numeric Variation or Subzone, or other tools’. Based on this description, concept plans are not considered to be land use rules and are not considered within the policy.

The guidelines for the use of the policy will detail that concept plans and overlays are exempt as detailed above.

11: Concern(s) are raised for ‘Emerging Activity Centre (EAC)’ subzone categorised as Commercial within the INF Guidelines.

EPA response: After discussions undertaken with PLUS, it was advised that extra zone characteristics and explanations are included in the Guide to the Planning and Design Code. It was noted that these should also be taken into consideration when classifying land use categories for the purpose of the noise policy.

The Guide to the Planning and Design Code notes that this subzone is only applied over locations where new activity centre(s) are anticipated but not confirmed through zoning yet. It also notes that the zone is primarily to accommodate residential development and as such has been reclassified as ‘Residential’ land use category in the INF Guidelines.

Recommended policy change: Include the Guide to the Planning and Design Code for consideration when determining land use category or categories that would apply to a Designated Area under clause 4(1).

12: One council provided feedback on the INF Guidelines and made comment on a few individual zone allocations.

Zone	Subzone	Noise EPP land use category	Comment from council
City Main Street Zone		Commercial	Support – however it is noted that the entirety of the City Main Street is spatially divided into Subzones, with there being no portion of the Zone that is not covered by a Subzone.
	Hindley Street Subzone	Commercial	The draft document includes two references to the Hindley Street Subzone. This appears to be an accidental duplication. In any event, it is noted that while the Hindley Street Subzone is identified as a late-night hospitality and entertainment district, the Desired Outcome also seeks a mix of high scale/density residential and short stay accommodation. It is recommended the land use category pay further consideration for existing and future sensitive receivers.
	Rundle Mall Subzone	Commercial	This subzone has not been included in the draft guidelines. As per the Hindley Street Subzone is it considered that the Land use category pay regard to both Residential and Commercial uses envisioned in the Subzones.
	City High Street Subzone	Commercial	The City High Street Subzone strongly encourages increased residential densities. Therefore, it is recommended the land use category pay further consideration for existing and future sensitive receivers.

The same council stated, in reference to the above table, it is noted that in ‘Part 8 – Administrative Terms and Definitions’ of the Planning and Design Code, the term ‘sensitive receiver’ includes the following text:

'Sensitive receiver means:

- 1 any use for residential purposes or land zoned primarily for residential purposes.
- 2 pre-school
- 3 educational establishment
- 4 hospital
- 5 supported accommodation
- 6 tourist accommodation.'

It is recommended that other sensitive receivers such as tourist accommodation are considered when assigning a land use category to a zone/subzone by the EPA.

EPA response: The EPA will recommend the subzones in the table above to be reclassified to be mixed use between 'Residential' and 'Commercial' land use categories for the purposes of determining indicative noise levels under the policy.

The Noise Policy 2007 does not have a definition for 'sensitive receiver' and will consider the indicative noise levels applicable based on the designated area of both the noise source and the noise-affected premises. There are no intentions to change this process from the current noise policy.

Recommended policy change: The EPA will recommend the subzones above to be reclassified within the INF Guidelines.

13: The State Planning Commission raised the following discussion points regarding the allocation of zones and subzones in the INF guidelines.

Zone	Sub Zone	Previous Noise EPP land use category	New Noise EPP land use category	Day	Night	PLUS recommendations	Decision	EPA's response
Capital City Zone		Residential, Commercial	Residential, Commercial	57	50	Include Light Industry	Not accepted	The inclusion of Light Industry land use category does not change the indicative noise factor of this zone. Furthermore, based on the Guide to the Planning and Design Code and the zone objectives, no Light Industry was mentioned.
Capital City Zone	City Frame Subzone	Residential	Residential, Commercial	57	50	Include Commercial	Accepted	Although noted to be 'primarily... residential development, the Guide to the Planning and Design Code seems to promote Commercial land uses such as ground level shops, personal services, restaurants, and community and hospitality uses'. The inclusion of Commercial land use category is accepted.
Conservation Zone	Aquaculture and Recreation Subzone	Rural Living	Rural Living, Rural Industry	52	45	Include Rural Industry	Accepted	The Guide to the Planning and Design Code envisages aquaculture, tourism and other such activities that are designed to minimise detrimental impacts on the natural environment. A compromise between Rural Living and Rural Industry is accepted.
Home Industry Zone		Light Industry	Residential, Light Industry	55	48	Include Residential	Accepted	As residential land uses are still envisioned on this site. A compromise noise factor between residential and light industry is accepted.

Zone	Sub Zone	Previous Noise EPP land use category	New Noise EPP land use category	Day	Night	PLUS recommendations	Decision	EPA's response
Infrastructure (Airfield) Zone	Residential Aviation Estate Subzone	Residential	Residential	52	45	Include General Industry	Not accepted	<p>The subzone seeks low density detached dwellings associated with the aircraft hangers. The noise amenity in these areas would be influenced by noise from adjacent airfields and this will already be taken into account when averaging the INL factors for the source zone and receiver zone.</p> <p>Furthermore, the inclusion of General Industry on this zone will increase the indicative noise factor of this zone during considerations for noise impacts external to the airfield.</p>
Master Planned Township Zone		Residential	Residential	52	45	Include Commercial	Not accepted	<p>The zone only identifies residential outcomes that are within reach of services and facilities and does not envision commercial within this itself. The subzone for this zone is envisaged to have the commercial activities intended within this zone.</p>
Recreation Zone		Commercial	Commercial	62	55	Include Special Industry	Not accepted	<p>It is understood why Special Industry was proposed for special events that may take place within these zones. It is noted that such noise sources are exempt from the Noise Policy anyway and would not be required to meet the indicative noise levels of the zone.</p> <p>The EPA has produced a <i>Noise management for outdoor events</i></p>

Zone	Sub Zone	Previous Noise EPP land use category	New Noise EPP land use category	Day	Night	PLUS recommendations	Decision	EPA's response
								information sheet that should be referenced for such events
Recreation Zone	Adelaide Showgrounds Subzone	Commercial	Commercial	62	55	Include Special Industry	Not accepted	<p>It is understood why Special Industry was proposed for special events that may take place within these zones. It is noted that such noise sources are exempt from the Noise Policy anyway and would not be required to meet the indicative noise levels of the zone.</p> <p>The EPA has produced a <i>Noise management for outdoor events</i> information sheet that should be referenced for such events.</p>
Resource Extraction Zone		General Industry	General Industry	65	65/55	Special Industry	Not accepted	This classification follows the current method noted in the Guidelines for the use of the Noise Policy, which designates resource extraction processes as general industry. To allow for consistency with current classification methods, this land use category is kept.
Rural Horticulture Zone	Windamere Park Subzone	Rural Industry	Residential, Rural Industry	55	48	Residential	Accepted	The performance outcome of the zone notes that both services and accommodation for the clients are envisioned within the zone alongside farming activities. A compromise between Residential and Rural Industry is accepted.

Zone	Sub Zone	Previous Noise EPP land use category	New Noise EPP land use category	Day	Night	PLUS recommendations	Decision	EPA's response
Rural Intensive Enterprise Zone		Rural Industry	Rural Industry, General Industry	61	53	General Industry or Special Industry	Accepted	As the zone envisions more intensive versions of rural activity, a compromise between Rural Industry and General Industry is accepted.
Rural Neighbourhood Zone		Rural Living	Rural Living	47	40	Residential	Not accepted	The zone envisions that facilities on site should 'enhance rather than compromise rural residential amenity'. It is classified that Rural Living amenity is envisioned within this zone.
Rural Neighbourhood Zone	Bookmark Creek Subzone	Rural Living	Rural Living	47	40	Residential	Not accepted	This subzone takes on the parent zone classification as it does not have any land use rules associated with it.
Rural Neighbourhood Zone	Adelaide Hills Subzone	Rural Living	Residential	52	45	Residential	Accepted	The Guide to the Planning and Design Code envisages residential and tourist accommodation. The performance outcome notes that development should 'complement the prevailing residential character'. This subzone is classified as Residential land use category.
Strategic Employment Zone		General Industry	General Industry	65	65/55	Special Industry	Not accepted	Special Industry is provided to classification of General Industry of significant scale and specialty. As an example, some of the subzones within this zone is classified as Special Industry as they are at a scale of statewide significance or public infrastructure.

Zone	Sub Zone	Previous Noise EPP land use category	New Noise EPP land use category	Day	Night	PLUS recommendations	Decision	EPA's response
Township Neighbourhood Zone		Residential	Residential	52	45	Include Commercial	Not accepted	The Guide to the Planning and Design Code specifically notes that Commercial land uses are not envisaged. Only Residential land use category is applied
Waterfront Neighbourhood Zone		Residential	Residential	52	45	Include Commercial	Not accepted	The zone envisages mostly housing which takes advantage of waterfront locations and community facilities must be comparable with local context. Only Residential land use category is applied

EPA response: The EPA's response is included in the table above.

Recommended policy change: The EPA will change the INF Guidelines in line with the response above.

5.2 The definition of a noise source

14: Although not intended, the definition of a noise source brings the existing Part 6 activities back into consideration under the main provisions of the Noise Policy. The proposed definition states ‘a commercial or industrial premises or a place at which an activity is undertaken, or a machine or device is operated, resulting in the emission of noise’. A place at which an activity is undertaken may be a domestic premises or a place where a frost fan operates. By this definition, the indicative noise levels become the relevant noise criteria to be achieved at other residences. These noise sources could be specifically excluded under Schedule 1 but have not been.

EPA response: The above submission is acknowledged. Consideration will be provided to update the definition of ‘noise source’.

Recommended policy change: The EPA will investigate whether changes are required to the definition of ‘noise source’.

5.3 Part 1 clause 4 – Relevant land uses and land use categories

15: Some stakeholders noted the existing term ‘principally promoted’ allowed for some level of autonomy when determining INL. It was noted the term that replaced principally promoted being ‘relevant land use’ removes flexibility from the user of the policy. Concern was raised that policy users would need to seek advice from the EPA if a circumstance was not captured in the INF guidelines. It was raised the term ‘relevant land use’ is not defined in the policy and that the use of the term ‘relevant’ may imply that any land use which is specified in the zone may be considered to be relevant and included in determining the land use category, even if it is secondary to others as opposed to ‘principally promoting a single land use.

EPA response: The inclusion of the INF Guidelines removes uncertainty in determining INL as the EPA has pre-interpreted all planning and design code zones and subzones into the appropriate land use categories. Therefore, users of the policy will no longer need to categorise land uses to determine INL and no longer need to determine which uses are principally promoted.

The inclusion of the INF Guidelines provides consistency for policy users. Previously the policy required a level of technical experience to identify an INL and this had led to misinterpretation and errors in the past. The proposed changes to clauses 4 and 5 provide clarity and removes uncertainty by ensuring designated areas within the planning system are consistently characterised for the purposes of the noise policy.

If there is a disagreement relating to INL Guidelines, the EPA as the Authority will consult with the State Planning Commission as noted within clause 4(6).

However, it is acknowledged that the term ‘relevant land use’ may cause confusion and consideration will be provided to determine if a different term may be more suitable.

Recommended policy change: The EPA will consider changing the term ‘relevant land use’.

16: How will the table of ‘relevant’ land use categorisation be included in future legislation?

EPA response: The EPA as the Authority will liaise with the State Planning Commission to update references to the policy under the Planning Code. The change will only consist of a title change to reference the new policy.

5.4 The term ‘designated area’

17: The draft policy proposes to use the term ‘designated area’ in place of the term ‘locality’ to avoid confusion with the term ‘locality’ commonly being used within the planning system. It is, however, noted that ‘designated area’ is also a term used within the PDI Act and the Planning Code. While this issue might not be considered significant, another term could be considered to avoid the potential for confusion.

EPA response: This is acknowledged by the EPA. A new term will be considered to ensure an independent term, for example “noise designated area”.

Recommended policy change: The EPA will recommend a new term is used to ensure independence from the PDI Act and Planning Code.

5.5 Part 1 clause 4(5) – Consulting with the State Planning Commission

18: One council queried the time constraints for development assessment purposes in relation to clause 4(5) given that assessment timeframes for new developments under the PDI Act are shorter. The feedback questioned whether ‘relevant authorities’ would be better served receiving their own legal advice as opposed to consulting with the State Planning Commission.

EPA response: The above questions may stem from misunderstanding of the term ‘Authority’. For the purpose of the policy, the Authority always refers to the EPA established under Division 1 of Part 3 of the EP Act. The clause means that the final determination is made by the EPA in consultation with the State Planning Commission.

Councils should use the INF Guidelines as a quick reference guide to determine INLs.

19: Is clause 4(5) still required if the INF Guidelines provide sufficient clarity with respect to the relevant land use category?

EPA response: Clause 4(5) allows for ongoing consultation on the determinations within the INF Guidelines. A proposed change to 4(5) is to remove references to ‘uncertainty’ as all zones and subzones have now been categorised under the new policy. The EPA is aware there will likely be disagreements in interpretation. This clause allows for this situation to be resolved by the EPA’s determination (as the Authority) in consultation with the State Planning Commission who are responsible for preparing and maintain the Planning Code.

Clause 4(5) permits the EPA as the Authority to determine INFs for newly introduced Planning and Design Code zones and subzones in the unlikely circumstance where a zone or subzone is delayed from being incorporated into the INF guideline.

Previously land use categories were determined based on the provisions in a council’s development plan, however with the introduction of statewide planning legislation the policy has been updated to consult with the State Planning Commission.

During the consultation one council questioned whether the State Planning Commission itself is to be consulted with or whether a delegate of the commission has this ability to provide advice. The EPA will consult with the State Planning Commission to determine the appropriate process for this consultation to take place, ensuring a streamline process.

Recommended policy change: The EPA will recommend removing the word ‘uncertainty’ from clause 4(5) and will consider adding further references to the INF Guidelines in clause 5.

5.6 Part 1 clause 5 – Indicative noise levels

20: One council suggested the following alternate wording for clause 5(6):

‘Subclause (5) does not apply if all of the following apply:

- a The noise source and noise affected premises are situated in differing designated areas;**
- b The designated areas of the noise source and the noise affected premises are separated by a third designated area that is at least 100 metres wide; instead, subclause (4) applies as if the noise source was located within the same designated area as the noise-affected premises.’**

Alternatively, this council requested if a diagram could be inserted as a schedule which illustrates clauses 5(4), (5) & (6) for clarity and to assist those interpreting the clause for the first time.

EPA response: Explanation of each situation where clause 5(4) to 5(6) are applicable can be found in the Noise Policy Guidelines.

21: One council sought clarification on the application of Part 1, clause 5(5) which refers to the averaging of the indicative noise factors for each of the land use categories within which those land uses fall. This clause fails to

identify the appropriate application of this policy when there is an inequitable split between the relevant land uses that are envisaged within the ‘noise designated area’. A situation which concerns more than two land uses will present further difficulties in the determination of the indicative noise level for an area.

EPA response: The new policy will function similarly to the current noise policy. It will consider the principal land uses envisaged within the designated area and assign land use categories to the noise designated area based on this consideration. For an inequitable split between land uses, the land use with the largest envisioned contribution will be considered to be the principal land use.

The noise designated area will be considered as mixed use if multiple land uses are equally promoted within the envisioned objectives. As such, multiple land use categories will be assigned to this noise designated area and an average of the noise factors are undertaken to determine the noise factor that would apply to the noise designated area.

22: Individual stakeholders suggested the following land use category changes: include a new category for community facilities that would accommodate non-commercial activities, and change the Light Industry classification, to provide the same indicative noise factors as the Commercial land use.

EPA response: There are currently no intentions to change the indicative noise factors presented in Tables 1 and 2 of clause 5(9). Any future proposed changes to indicative noise factors will require a separate extensive consultation process.

23: One acoustic consultant stated clause 5(6) of the draft policy describes a procedure, which is effectively the same as the procedure of the policy. Experience with the policy indicates that this clause does not work well and may result in illogical outcomes.

EPA response: Similar to Point 5, the INLs are not mandatory and are simply the first step in assessing noise. If the INLs are considered to not be suitable for a particular situation, the EPA must provide consideration under clauses 18 (for compliance purposes) and 19(6) (for planning stages) are required.

Fringe examples may be included in the Noise Policy Guidelines as potential reference. However, it must be noted that each scenario is considered on a case-by-case basis by the EPA.

5.7 Part 5 – Development authorisation applications

24: Part 5 is worded as only being applicable to Development Applications (DA) referred to the EPA as the Authority. Longstanding practice has been to apply the provisions of Part 5 irrespective of whether a Development Application is referred to the EPA, achieving consistency across otherwise similar projects. The Planning and Design Code already refers to the ‘relevant Environment Protection (Noise) Policy criteria’ in the Interface Between Land Uses modules. It would appear that revision of the policy would be an opportune time to formalise the approach taken to Development Applications not referred to the EPA.

EPA response: The EPA is unlikely to recommend this change at this time due to the substantial impact of this proposal on local government. This would require extensive consultation with the appropriate parties prior to implementation.

25: Is there an opportunity to address the gap which exists between how a development is addressed and assessed and how an existing approved operation is assessed? Under the existing policy, if a development has been subject to a planning assessment and there are no conditions which limit the noise levels to those planning levels, then the initial operation (and any issues it generates) could default across to being considered as an existing approved operation (and gain a 5 dB(A) increase in allowable noise level).

EPA response: The more stringent noise criterion applicable during the planning phase is intended to be a conservative assessment when introducing a new noise source to the area. Noise impacts can be difficult and expensive to address retrospectively after a development has been approved.

Furthermore, the implementation of the more stringent noise criterion during the planning phase is to prevent any potential ‘background noise creep’ that may occur if several similar developments take place in the same area.

Therefore, no change is proposed to address the difference in indicative noise levels during the development phase and compliance phase at this time.

26: Review of the Planning Code and any consequential code amendments is necessary to ensure that domestic noise policy is adequately reflected in development assessment provisions prior to the introduction of the proposed policy including review (with update as necessary) of Practice Directions, also prior to the introduction of the proposed policy.

EPA response: The LNLC Act is the legislation to enforce and regulate impacts from domestic noise sources.

The draft policy has been updated to remove any references to domestic noise sources which is reflected in the new title of the policy 'Environment Protection (Commercial and Industrial Noise) Policy 2022'. The submission addressing the review of the Planning Code for domestic noise is out of the scope of for this consultation.

5.8 Local Nuisance and Litter Control Act 2016

27: How will the users of the new policy know whether to use the policy or refer to the LNLC Act?

EPA response: The provisions of the policy will not be applicable to noise sources referred to within Schedule 1 or noise sources referred to in the 'Part 6 Guidance Document' section of the policy.

As the policy is referred to in 'the Planning Code at Performance Outcome 4.1 of Interface Between Land Uses in Part 4 General Development Policies', it is considered to be a Deem-to-Satisfy requirements for these developments. Commercial and industrial developments are required to meet the provisions of the policy during the planning stages.

For compliance purposes, the provisions within the policy are applicable to 'Schedule 1 – Prescribed activities of environmental significance' as defined in the EP Act. Most other operations that are not considered under Schedule 1 will come under the assessment of the LNLC Act.

5.9 Objective noise levels and the removal of Part 6 from the existing policy

28: During the consultation a number of stakeholders raised concerns regarding the proposed removal of Part 6. In particular, councils stated this would result in local government using a subjective assessment of noise from sources previously included in Part 6 of the existing policy. Some councils raised concerns regarding the qualifications needed to undertake assessments. Councils questioned whether they would need to employ consultants to undertake such assessments to ensure they are admissible in court.

EPA response: An Authorised Officer may utilise various means to develop evidence of an offence and support an assessment made under section 50 of the LNLC Act. A subjective assessment constitutes proof in the absence of proof to the contrary, however Authorised Officers are not limited to using a subjective assessment in developing evidence of an offence. Local government may use the general guidance of the policy to develop further evidence of an offence to support their subjective assessment to provide a more solid footing for taking regulatory action (or defending not taking regulatory action) as it reduces the likelihood of 'proof to the contrary' being provided by the alleged offender. Local government do not need to be an Authorised Officer under the EP Act to use the policy as general guidance.

The *Local Nuisance and Litter Control (Miscellaneous) Amendment Bill 2022* for LNLC Act amendments was recently open for consultation and closed on 10 February 2023. The EPA will consider all feedback received on the Bill including any references to noise.

29: One council noted the proposed policy changes will increase council's obligations for managing noise under the LNLC Act and the removal of council's discretionary power for determining the nature of the land use category for consideration and assessment of appropriate noise levels.

EPA response: The removal of 'Part 6 Special Noise Control provisions' was intended to remove duplication of legislation for activities that are now legislated within the LNLC Act. The new noise policy will not change council's obligations in managing noise and will remain the same with the introduction of the LNLC Act. It is acknowledged that the objective levels presented within this section of the existing noise policy is useful to compliment the subjective assessment undertaken under the LNLC Act.

The noise criteria for domestic noise sources and activities in Part 6 of the current noise policy are the same as the indicative noise factor for residential land use categories. It is recommended that the residential indicative noise factor can be used to assist in assessing domestic noise.

For other noise sources, the general provisions of the noise policy may be referenced to assist with the subjective assessments as required by the LNLC Act if appropriate.

30: One council stated the loss of these policies is also considered to give rise to greater uncertainty for Relevant Authorities and designers in respect to the assessment of development proposals. For example, the siting of a conditioner or pump, which are common and expected within residential areas, can be determined with greater certainty where the objective criteria are understood and applied. The removal of objective criteria leaves open greater uncertainty about possible outcomes.

EPA response: As noted in point 29, the INL as determined by the general provisions of the Commercial and Industrial Noise Policy may be referred to complement subjective assessments. Noise level requirements for fixed domestic machines (clause 25 of existing policy) which are proposed to be removed from the policy are the same as the INL that would apply under the general noise provisions in residential designated areas. The EPA does not see any disadvantage to planning authorities in this change.

31: One council encouraged further discussions between the EPA and Planning and Land Use Services (PLUS) to ensure the policy within the Planning Code is suitable to enable assessment of noise pertaining to residential forms of development.

EPA response: As noted in point 30, the mandatory noise levels for fixed domestic machines are the same levels as the indicative noise factor that would apply under the general noise provisions in residential designated areas. Councils are able to reference the indicative noise factors within Table 2 [Clause 5(9)] and the general provisions of the Noise Policy as guidance when determining if noise impacts are appropriate.

32: One acoustic consultant raised concerns regarding the removed Part 6 items not being excluded from the policy. This could result in legislation shopping whereby if you don't get the answer you like under the LNLC Act 1997, you can try the EP Act. The stakeholder stated schedule 1 excludes the *Liquor Licensing Act 1997* for that reason (to offset the potential for shopping)

EPA response: The purpose of Schedule 1 of the policy is to list noise excluded from the policy. Schedule 1 lists noise sources which:

- cannot reasonably be measured by the policy; or
- have separate commercial and industrial noise rules under separate legislation for example the *Liquor Licensing Act 1997*.

Recommended policy change: The EPA will consider possible amendments to further clarify which noise sources are exempt from the policy based on feedback received.

33: Frequently, councils and council assessment panels will require acoustic reports to address noise and they will refer to the policy for appropriate criteria against which to assess the likely noise impact. That can be for all types of development, from domestic trailer construction to a function centre. The changes should not affect the availability of such criteria.

EPA response: There are no proposed changes that would impact a council's ability to require acoustic reports to address and assess noise impacts.

34: There may be instances where noise previously subject to Part 6 would need to be assessed at the planning consent stage (as opposed to being left for consideration as local nuisance) and objective criteria is needed to assess noise for these forms of development.

EPA response: For the above submissions, apart from frost fans (see point 35) the only relevant assessment based on the existing Part 6 during the planning stages are: fixed domestic machine noise (clause 25 of the existing policy) and building intruder alarm systems (Part 6 Division 4 of the existing policy).

As referenced in point 30 the objective criteria quoted for fixed domestic machine are the same as those within Table 2 [clause 5(9)] for residential land use categories. Councils are able to use the indicative noise levels recommended in this table to support their assess noise from fixed domestic machines.

For building intruder alarms, provisions in Division 4 of the Noise Policy reinforces the design requirements for alarms installed in accordance with *Australian Standard AS 2201 – Intruder alarm systems*. It is proposed that the requirements of these standards are referred to directly.

5.10 Frost fans

35: Many stakeholders raised concerns regarding the removal of Part 6 and the consequences this brings to noise generated from frost fans. Stakeholders voiced the existing policy mandates noise levels and operational requirements for frost fan installations. Stakeholders voiced the frost fan requirements were established to specifically consider a range of factors unique to frost fans and their operation. The provisions provide a clear and concise set of rules used by many stakeholders.

Stakeholders stated the current guidance under the existing policy is clear for Relevant Authorities making a planning assessment on a frost fan application as to what level of noise is appropriate. Feedback noted the removal would mean each local government area could determine their own approach to regulate frost fan noise including potentially a subjective view of a council officer. Stakeholders were concerned this could then introduce disparity and inequality across different growing regions.

Stakeholders were also uncertain what this would mean retrospectively for existing frost fans. An unintended consequence of removing Division 5 – Frost Fans from the policy would mean that to comply, existing fixed frost fans would need to achieve a noise level of no greater than 50dB(A) at non-associated sensitive receivers. Further stakeholders raised concerns, frost fan source noise levels would be subject to the application of at least two characteristics (a penalty of 8 dB(A)) to the measured noise reading.

EPA response: The concerns raised on this point are acknowledged. It is proposed that the existing frost fan provisions will be retained in the new version of the policy.

Recommended policy change: Retain noise assessment provisions for frost fans.

5.11 Changes to Schedule 1

36: During the consultation two councils asked who is responsible for regulating equipment and machine noise from schools, childcare centres, and churches? Given these are listed as an exclusion under the policy in schedule 1 it remains unclear who is responsible for managing these impacts when ‘noise from activities carried on in the normal course of a school, kindergarten, childcare centre or place of worship is listed as ‘things that are not local nuisance’ under schedule 1, Part 3, 5(n) of the LNL Act. Similarly one council stated the policy should be based on the ‘type’ of noise and not the actual ‘land use’ to ensure management of commercial and industrial noise is appropriate.

EPA response: Further consideration will be given to the above issue. Potential wording changes to Schedule 1 will be considered to allow mechanical noise such as air conditioners to be assessed under the noise policy during the development stage of schools, childcare centres and churches.

During compliance, the LNL Act would apply to noise impacts that are not from “activities carried on in the normal course of a school, kindergarten, childcare centre or place of worship”.

Recommended policy change: Changes to Schedule 1 wording will be reviewed based on feedback received.

37: Two interested individuals commented on the proposed removal of the *Community Titles Act 1996*, *Strata Titles Act 1996*, and *Residential Tenancies Act 1995* from Schedule 1. One individual stated there is no

government agency which administers these Acts. It was also noted that they are also excluded from the LNLC Act. It was questioned whether removing these Acts from Schedule 1 means they are now under the remit of the noise policy?

EPA response: The definition of a noise source in the policy has changed to only reference 'commercial and industrial noise'. Domestic noise has been removed from the policy. Schedule 1 of the draft policy describes commercial and industrial noise sources which are exempt from the policy.

Changes to the policy have not affected who is responsible for dealing with noise for properties managed under the *Community Titles Act 1996*, *Strata Titles Act 1996* and *Residential Tenancies Act 1995*. The EPA is not responsible for dealing with tenant issues that are managed under these Acts.

Consumer and Business Services (CBS) is responsible for the *Residential Tenancies Act*. The CBS is also responsible for compliance matters under both the *Community Titles Act* and *Strata Titles Act*. Policy matters with respect to community and strata titles is dealt with by Legislative Services in the Attorney-General's Department.

38: One individual questioned if changing item 1 of Schedule 1 means that all noise consisting principally of voices or music is excluded from the policy (not just from domestic premises). This exclusion could capture a number of commercial enterprises generating noise from voices currently assessed under the policy.

EPA response: The feedback is noted. Consideration will be provided to the wording in Schedule 1 to allow for such an assessment under the new policy.

Recommended policy change: Changes to Schedule 1 wording will be reviewed based on feedback received.

5.12 Intermittent characteristic

39: What problem is the term intermittent trying to solve?

EPA response: The introduction of intermittent noise character allows the noise policy to be more technically correct in describing annoying noise characteristics. Where previously, intermittent noise character was lumped in together with the modulation noise characteristics. The Noise Policy intends to differentiate between noise sources that start and stop and noise that have a pulsing characteristic.

With this introduction, noise that would attract the intermittent noise character would subjectively be described as noise 'coming and going' while noise that would attract the modulating noise character would subjectively be described as 'pulsing', 'beating' or 'throbbing'. It is understood that the current draft of the policy may misrepresent this intention and the EPA will consider a change to the definition of 'intermittent noise character' for clarity.

The proposed change to the draft currently in consideration would only apply to noise sources which are normally 'continuous' in nature but have a start and stop nature. Furthermore, to reduce the potential of misinterpretation and confusion with 'modulating' noise character, a change to the definition of 'modulating noise characteristic' will be considered.

In accordance with the existing policy, a pulsing noise source that comes and goes would only attract one noise characteristic penalty. However, with this change, such a noise source would attract two noise characteristic penalties in the new policy.

The Noise Policy Guidelines will provide further details on the assessment of these noise characteristics, it is not envisioned that the modulation and intermittent noise characteristics will both apply for a single noise source for most operational situations.

Recommended policy change: Change will be considered to the definition of both intermittent and modulating noise characteristics in clause 3. The considered changes will ensure minimal overlap between the two noise characters.

40: What are examples of intermittent noise?

EPA response: Examples of intermittent noise would be:

- operation of a generator (noise source) starts and stops multiple times over the assessment period
- operation of a forklift coming and going within a warehouse operation.

41: What are some examples where both intermittent and modulation could both be applied?

EPA response: As noted above, it is not foreseen that intermittent and modulating noise characters to be widely applied together apart from very niche situations. Further details on the application of these noise sources are proposed to be included within the Noise Policy Guidelines.

Situation where both intermittent and modulation characteristics could apply:

An exhaust fan that produces a noise described as ‘pulsing’ or ‘amplitude modulation’ is operated in an on/off pattern several times within an assessment period.

Situations where only one noise character should be applied:

Dominant truck noise coming and going on site – attracts only intermittent noise characteristics. However, if tonal reverse beepers are present on the subject site, tonal noise characteristics may be applicable. The modulation noise character will not be applied for this situation.

42: It has been stated that the additional penalty of intermittent has been introduced to bring South Australia’s Noise Policy in line with other jurisdictions. However, there is currently no penalty for ‘modulation’ in other states. NSW and Victoria both have an intermittency penalty, however there is no penalty for modulation. Why does South Australia need both?

EPA response: Every state assesses noise impacts differently and have different methods of applying noise characteristic penalties. A direct comparison between policies may lead to significant inconsistencies.

As noted in prior points, the intention of the introduction (and separation) of intermittent noise character and modulating noise character allows the noise policy to more accurately describe the characteristics of the noise impacts.

43: Several submissions were concerned the introduction of the intermittent noise characteristic would result in a noise source being subject to both modulation and intermittent penalty characteristics. It was questioned whether this could result in an 8dB(A) penalty being applied instead of 5dB(A)? Stakeholders also questioned whether the intermitted characteristic could be applied retrospectively?

EPA response: As noted in point 39, the EPA will consider a change to both the definition of intermittent characteristic and modulating characteristics with the intention to further clarify the difference between the noise characteristic. As stated above it is not envisioned that the modulation and intermittent noise characteristics will both be applied to a single noise source for most operational situations.

If a currently operating commercial or industrial noise source is specifically both modulating and intermittent, an additional penalty may apply when assessing under the general provisions of the new noise policy. However, consideration under clause 18 must still be utilised to determine if any action is required to be undertaken by the EPA as the Authority. Noise impacts that were previously assessed under the current noise policy will be taken into consideration.

44: Does the term intermittency cover large multi-resident sites, for example caravan parks?

EPA response: If a commercial and/or industrial noise source (such as a generator) from the caravan park is impacting on an external receiver and has intermittent characteristics, the intermittency penalty may apply. However, the policy would not apply to situations where the noise source and the noise affected premises are from the same occupation.

45: Are reverse beepers an example of intermittent noise?

EPA response: The EPA will consider the need to exclude reverse beepers from the definition of ‘intermittent’. See point 39 above.

46: Can the intermittent characteristic and its defining principles be placed in the LNLC Act? The definitions provide councils with improved clarity in determining noise sources that are identified as a nuisance.

EPA response: The objective noise measurement methodology in the policy (and other objective assessment methods found to be relevant) may be adopted by councils to support subjective assessments.

47: Does the intermittent characteristic apply to public infrastructure works and the movement of vehicles entering and leaving a site, including during the night? Restrictions placed on particular facilities may compromise the ability to deliver public infrastructure services efficiently.

EPA response: This submission is acknowledged. The EPA will consider adding noise from construction sites and public infrastructure works to Schedule 1 to exempt these noise sources from the policy.

Recommended policy change: Consider adding construction noise and noise from public infrastructure works to Schedule 1.

5.13 Guidelines for the use of the policy

48: Stakeholders asked whether a new guideline will be created to replace the 2009 guideline. Stakeholders also asked whether the new guideline would be released at the same time as the new policy.

EPA response: Yes, a new guideline titled 'Guidelines for the use of the Environment Protection (Commercial and Industrial) Noise Policy 2023' will be published alongside the new policy. The updated guideline will be expanded to include the changes to the policy and will include more examples to demonstrate how the policy operates and should be applied. The EPA will circulate the draft guidelines to stakeholders who submitted feedback on the draft policy for comment.

49: One acoustic consultant suggested the following should be moved from the guidelines into the measurement procedure of the policy: 'a measurement place should be inside with windows closed if a building incorporates acoustic treatment'. Including this provision is especially important due to the increased density of living adjacent interfaces over the last 15 years.

EPA response: The EPA agrees with this suggestion and will consider including this provision into the policy. The proposed hierarchy for noise measurement location selection will note that if a building has incorporated treatment specifically for noise, measurements is to be undertaken within the habitable room with the acoustic treatment if reasonable and practicable.

Recommended policy change: The EPA recommends the following be included in clause 11(3) and 11(5) of the policy: 'a measurement place should be inside with windows closed if a building incorporates acoustic treatment'.

50: One acoustic consultant questioned whether further examples and learnings relating to clause 18 (factors for consideration when operating above the indicative noise level) would be included in the new Noise Policy guidelines?

EPA response: The Noise Policy Guidelines are being updated and will include stronger advice with more scenarios for how the policy can be operationally applied.

It is important to note that all considerations under the policy are still assessed on a case-by-case basis and therefore the scenarios provided in the guidelines are only examples and are not exhaustive.

51: Will the AS1055 1/3 octave band test be included in the Noise Policy Guidelines?

EPA response: Objective tonal identification method in accordance with the *Australian Standard AS 1055-2018 Acoustics – Description and measurement of environmental noise* will be referenced within the Noise Policy Guidelines.

5.14 Other feedback

Other comments	EPA response
<p>It is important that when the policy is finalised, it is well communicated to other industries, including mineral exploration and mining, to ensure all affected stakeholders and groups are aware of changes and the calculation of applicable noise levels.</p>	<p>This feedback is acknowledged. As the new noise policy does not seek to change the fundamentals of the current noise policy, it is highly unlikely that applicable noise levels will change for an existing operation.</p>
<p>Non-statutory guidance materials including examples relevant to mining operations, such as drilling, should be created to ensure the assignment of categories is being applied correctly, and without unintended consequences.</p>	<p>As the new noise policy does not seek to change the fundamentals of assessing noise from the current noise policy, it is highly unlikely that applicable noise levels will change for an existing operation.</p>
<p>We encourage further discussions between the EPA, PLUS and Consumer and Business Services to improve the policy settings for liquor licensed premises. Premises under the <i>Liquor Licensing Act 1997</i> are excluded from application of the policy. There are challenges with our experience in how licensed facilities are assessed in respect to noise impact at the planning consent stage. There are challenges in how 'Relevant Authorities' determine what is an acceptable objective level of noise as the policy does not strictly apply.</p>	<p>Planning authorities should consider developing their own noise criteria for this sector as this is outside the EPA's jurisdiction.</p>
<p>We note the Planning and Design Code contains a Performance Outcome within the 'Interface between Land Uses' module of the Code relating to 'Outdoor areas associated with licensed premises...'. This policy does not offer guidance as to how such noise should be determined. There is reference to not causing unreasonable noise impact on existing adjacent sensitive receivers but there are no objective criteria to apply it against.</p>	<p>Planning authorities may wish to consider setting their own noise criteria for liquor licensed premises as this is outside of the EPA's jurisdiction.</p>
<p>A shooting range greater than 200 m from a residence would no longer be covered. Over the past 15 years, several shooting ranges have been developed based on the objective criteria of the current policy and are therefore currently protected by the current policy against action under the general environmental duty.</p>	<p>Shooting ranges that were previously assessed under the noise policy will be assessed with the current noise policy. However, new shooting ranges after the introduction of the new noise policy will be assessed under general environmental duty.</p>
<p>South Australian Country Fire Service seeks an exemption from the policy for training activities conducted pursuant to the conduct of the functions and powers of the agency conferred under section</p>	<p>The general environmental duty requires all reasonable and practicable measures to prevent or minimise environmental harm that would apply to most activities. Noise caused by emergency vehicle sirens, fire alarms and other emergency alarms and devices are exempt from the noise policy.</p>

Other comments	EPA response
<p>59 of the <i>Fire and Emergency Services Act 2005</i> to support professional emergency response.</p>	<p>It is advised that any ongoing noise (not responding to emergency) should minimise impacts where reasonable or practicable. Furthermore, factors within clause 18 must be considered for any noise sources that exceed the indicative noise levels.</p>
<p>Some councils and consultants recommended the following: create spatial layers in SA Property and Planning Atlas detailing indicative noise factors that align with the zone/subzone</p>	<p>This is acknowledged and will be investigated. Such an implementation might require extensive work and is outside the scope of the noise policy consultation.</p>

6 Next steps

The feedback from Stage 3 of the consultation and the recommended policy changes in this report will inform the development of the final draft policy in accordance with section 28 of the EP Act.

In addition, to meet the requirements of section 28 of the EP Act – ‘Normal procedure for making policies’ the EPA as the Authority will undertake the following activities:

- Publish this report in accordance with section 28(9) of the EP Act which requires the EPA as the authority to prepare a response to submissions received during the consultation and make the response available for inspection by interested persons during ordinary business hours at the principal office of the Authority until the Authority reports to the Minister on the draft policy under subsection 11.
- The Authority must then report to the Minister and the Minister may, after considering the report and any recommendations of the Authority on the matter—
 - a approve the draft policy; or
 - b alter the draft policy and approve the draft policy as altered; or
 - c decline to approve the draft policy.

Stakeholders who participated in Stages 1, 2 or 3 of the consultation will receive notification if the draft policy is declared to be an authorised environment protection policy under the EP Act by the Governor in accordance with section 28(12) of the EP Act.

In accordance with section 30 of the EP Act following authorisation, the Minister must refer the draft policy to the Environment, Resources and Development Committee of the Parliament within 14 days. Then within 14 sitting days, the policy is to be laid before both Houses of Parliament.

Appendix 1 Stakeholders who submitted feedback

- 1 Hahn Barossa Vineyards
- 2 Dimchurch Vineyards
- 3 Australian Frost Fans
- 4 Association of Mining and Exploration Companies
- 5 Port Pirie Regional Council
- 6 City of Onkaparinga
- 7 City of West Torrens
- 8 NSW EPA
- 9 Echo Acoustics
- 10 City of Prospect
- 11 Nippy Waikerie Pty Ltd
- 12 Casella Management
- 13 Burgemeister Vineyards Pty Ltd
- 14 SA Water
- 15 NELA – prescribed body
- 16 Light Regional Council
- 17 Community Fire Service
- 18 Timberlink Australia
- 19 Sonus
- 20 Barossa Council
- 21 City of Adelaide
- 22 SA Planning Commission
- 23 Department for Environment and Water
- 24 Copper Coast Council
- 25 City of Norwood Payneham & St Peters
- 26 Seven interested individuals
- 27 One consultant