

# Legal Alert

Wine

March 2019

## Frost Fans - Development Authorisation Requirements

### In a Nutshell

The installation of frost fans in South Australian vineyards requires development plan consent and building rules consent. The ERD Court has confirmed that frost fans are acceptable in-principle in Primary Production zones, so the key planning considerations will be noise and visual impact. At a minimum, proposed frost fans will need to comply with the frost fan noise limits in the *Environment Protection (Noise) Policy*, which include limits of 55dB(A) outside residences in a primary production (or other rural industry) zone, and 45dB(A) outside residences in a rural living zone.

### Requirement for development authorisation

As another winter approaches, vineyard operators are reminded that the installation of new frost fans requires both development plan consent and building rules consent in South Australia.

Applications for development plan consent must usually be submitted to your local council. Applications are assessed for consistency with the Development Plan as it applies to your property.

The South Australian Environment, Resources and Development Court has confirmed that frost fans are acceptable in-principle in Primary Production zones, subject to their impacts on amenity.

The Court found that frost fans are also consistent with the rural character of the landscapes protected in South Australia's Character Preservation Areas. As such, the preservation of a rural landscape is not a valid basis for refusing consent for frost fans.

### Noise as a key consideration

The key consideration for a development application for frost fans is likely to be noise impact.

At a minimum, frost fans should comply with the *Environment Protection (Noise) Policy 2007*, which specifies allowable noise levels for frost fans. To comply, total noise levels from all frost fans (when operated simultaneously) must not exceed 55dB(A) measured outdoors at any residence in a primary production (or other rural industry) zone, or 35dB(A) measured indoors. In a residential or rural living zone, these limits reduce to 45dB(A) outdoors and 25dB(A) indoors.

In addition, frost fans must not be larger than what is reasonably required for effective operation and must only be operated during periods of frost risk. Maintenance work may only be carried out between the hours of 7am and 10pm.

If any residences are located within a few hundred metres of a proposed frost fan, we recommend that you seek advice from an acoustician before lodging a development application.



### Other considerations

The visual impact of the proposed frost fans may also be relevant to the assessment of your development application, particularly where the frost fans can be viewed from yards, gardens and residences nearby.

Ideally, frost fans will be set back from site boundaries and placed in unobtrusive locations, or will otherwise be partially screened from view by topography or vegetation.

### Contact details

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