
From: Parnell <Parnell@parliament.sa.gov.au>
Sent: Tuesday, 30 October 2018 8:56 AM
To: DPTI:Planning Engagement
Cc: Parnell
Subject: RE: State Planning Policy on Climate change

Michael Lennon,
Chairperson,
State Planning Commission

Dear Michael,

I wish to make a supplementary submission to the State Planning Policy on Climate Change.

In my original submission (below), I raised the issue of mandatory gas connection to new housing estates in Mount Barker. I pointed out that property developers were mandating connection AND use of gas for a range of specified household purposes such as room heating or water heating. I pointed out that mandating fossil fuel use is at odds with reducing our carbon emissions and locks householders into higher energy bills.

In my submission, I referred to the example of the [Springlake](#) development, however I have now discovered that the situation applies to most (if not all) of the big residential developments in Mount Barker. These include [Clover Park](#), [Amblemead](#), and [Bluestone](#).

I have now also discovered that the problem is wider than just the behaviour of property developers and their commercial arrangements with gas companies. It is also a problem inherent in the Development Plan. To be fair, it isn't a problem in the Mount Barker Development Plan, however it is a problem in other Development Plans such as in Playford Council (which includes many new housing estates). The first Principle of Development Control states:

1 Development should not occur without the provision of adequate utilities and services, including:

- (a) electricity supply
- (b) water supply
- (c) drainage and stormwater systems
- (d) effluent disposal systems
- (e) formed all-weather public roads
- (f) telecommunications services
- (g) **gas** services
- (h) social infrastructure, community services and facilities

In my submission, an over-arching requirement to require gas services before development can occur should not be included in any current Development Plan or in the new Planning and Design Code. I believe that mandating or preferring fossil fuel use over other less polluting energy alternatives is bad public policy. The State Planning Policy on Climate Change should reflect this.

Lastly, I can advise that since I made my submission I have taken two additional steps in relation to this matter:

1. I have introduced a Bill into State Parliament to amend the Planning Development and Infrastructure Act. This Bill provides that any provision that purports to require mandatory connection to gas or use of gas is "void and of no effect". [https://www.legislation.sa.gov.au/LZ/B/CURRENT/PLANNING%20DEVELOPMENT%20AND%20INFRASTRUCTURE%20\(GAS%20INFRASTRUCTURE\)%20AMENDMENT%20BILL%202018_%20HON%20MARK%20PARNELL%20MLC.aspx](https://www.legislation.sa.gov.au/LZ/B/CURRENT/PLANNING%20DEVELOPMENT%20AND%20INFRASTRUCTURE%20(GAS%20INFRASTRUCTURE)%20AMENDMENT%20BILL%202018_%20HON%20MARK%20PARNELL%20MLC.aspx)

2. I have lodged a complaint with the Australian Competition and Consumer Commission in relation to “anti-competitive conduct”. I have asked the ACCC to investigate whether the mandatory gas provisions should be struck out as anti-competitive.

I am happy for this submission to be published on the Planning Commission’s web site.

Regards,
Mark Parnell

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From: Parnell
Sent: Friday, 12 October 2018 5:05 PM
To: 'DPTI.PlanningEngagement@sa.gov.au' <DPTI.PlanningEngagement@sa.gov.au>
Cc: Parnell <Parnell@parliament.sa.gov.au>
Subject: State Planning Policy on Climate change

Dear Michael,

I wish to make some comments in relation to Draft State Planning Policy 5: Climate Change.

The matters raised below are ones that I proposed to raise when the ERD Committee of Parliament considers this in coming months, however I think it makes more sense to highlight them to you now so that they can be addressed in the next draft, rather than waiting for a final version. I’m happy to have this included with other submissions you have received and published on-line.

As you may be aware, it was my amendment to the Bill in the Legislative Council which incorporated the requirement for this policy. I am also responsible for the Biodiversity Policy amendment, however I will deal with that separately.

My main problem with the Draft Policy is that it under-states the crucial role of the planning system in reducing greenhouse gas emissions and helping to prevent excessive global warming. The recent wake-up call from the International Panel on Climate Change tells us that we need to do much more to limit global warming and not just focus on adaptation. Of course it is easier to deal with adaptation than with mitigation, however the imperative should be on the latter. For decades we have had planning policies that restrict building too close to the sea or which set flood prediction levels to prevent inappropriate development on flood plains and to protect property. These are existing climate change-related policies. What has been missing is any serious attempt in the planning system to reduce the impact of development (both individually and collectively) on the climate. That was the reason I moved in Parliament for this State Planning Policy.

Under s.58 of the Act, State Planning Policies may include “policies, objectives or principles that are to be applied under the provisions of the Act or the terms of state planning policy”. Whilst SPPs are not used directly in

development assessment, their job is to inform those elements of planning policy that WILL be used in development assessment, in particular, the Planning and Design Code.

The Act further provides that the Planning and Design Code MUST comply with any principle prescribed by a State Planning Policy. [s.66(3)(f)].

What is most disappointing is that the draft Climate Change SPP does not include any “principles” and only lists a small number vague and ineffectual objectives and policies. In fact, as far as I can see, NONE of the 16 draft SPPs include any “principles”.

I note that the SPP consultation draft (at p.8) states: “Under the Act, all designated planning instruments will have to comply with the objectives and policies prescribed by the relevant SPPs during both the initiation and amendment phases of Regional Plans and the Planning and Design Code (the Code).” Unless I have missed something here, I think this advice is wrong. The Act specifically refers to the inclusion in SPPs of “policies, objectives or principles”, yet the only binding elements are the principles NOT the policies or objectives.

I would like to see this issue addressed in subsequent drafts of all the SPPs.

At present, the only mitigation provision in the Objective is “Our greenhouse gas emissions are reduced...”. With respect, that is far too vague and meaningless in the context of either individual developments or cumulative impacts. An objective of a carbon-neutral economy by 2050 would be more appropriate.

In the 8 policy points, there are a number of relevant mitigation measures:

- compact urban form (1);
- energy and water efficient buildings (3);
- facilitating green technologies and industries that reduce reliance on carbon-based energy supplies (5);
- carbon sequestration (6); and
- support development that makes the fullest possible contribution to mitigation (8).

In relation to Policy 8, it is worth noting that the elephant in the room is the flip side to this policy. It’s one thing to support a solar farm, but equally important for the planning system to be able to not support development that is clearly damaging to the climate. I refer below to the recent decision of the Planning Commission to NOT have regard to climate policy in recommending to the Minister support for a new fossil fuel power station.

In my submission, the following principle needs to be incorporated into the SPP: “Planning policy should prohibit new development that is likely to exacerbate climate change in favour of alternative forms of development that do not exacerbate climate change”.

I appreciate that this approach might be seen to offend traditional narrow planning practice where assessment authorities only look at what is proposed, NOT what might be a better alternative. In my submission, if we are to take climate change seriously, the planning system has a key role to play in ensuring no more bad investments that harm the climate. Planners have traditionally said that it is not their role to protect developers from making bad investments, however it is the role of planners to protect the community and the environment from the consequences of those bad investments. Those consequences can be local or global.

Clearly new power stations that burn coal, gas, oil or diesel to generate electricity have negative consequences for climate change. That is now beyond doubt. The IPCC says we need to get out of the business of burning coal altogether by mid-century and that new coal-fired power stations are completely at odds with taking action on climate change. Other scientists have said that 80% of all remaining known fossil fuel reserves should be left in the ground and we certainly shouldn’t be searching for and exploiting new fossil fuel reserves.

How the planning system deals with development applications for new fossil fuel projects is the clearest case study for whether the planning system is part of the solution or part of the problem. So far, it has been the latter. The reasons for this are many, however at the heart of the problem is a failure on the part of the planning system to look beyond narrowly confined planning documents that focus on local rather than global impacts. For example, smoke and noise from a new power station that will affect neighbours is almost certain to be considered by planning

authorities, but emissions that harm the global climate will not. This failure of the planning system was one of my motivations for insisting that a State Planning Policy on climate change be incorporated in the new Act.

A recent example that illustrates this point is the approval of Alinta's proposed new gas and diesel-fired power station at Reeves Plains near Mallala. Like most new power stations in recent years, this was assessed under s.49 with SCAP as the assessing authority and the Minister being the final decision-maker. Because the Minister is not bound by the Development Plan, my submission to SCAP was that as the principal advisory body, they too should provide advice on any relevant matter, not just the Development Plan. My submission (attached) went on to identify a range of policy documents around climate change, carbon neutrality and the need to reduce emissions. This is a submission I have made a number of times in similar circumstances. I have had to do this because SCAP has adopted secretive processes that mean representors are not given the courtesy of reasons for decision and not provided with a copy of the advice that SCAP gives to the Minister. Ultimately, it is only through Freedom of Information that I have ascertained how SCAP deals with these arguments.

In providing advice to the Minister on the Reeves Plains application, the Presiding Member of SCAP stated: "I wish to confirm that the Panel considered the application information put before it and notes that consideration was not able to be given to the wider strategic implications of the proposal as raised in public representations." Whilst the Presiding Member did identify the nature of these representations, they formed no part of the SCAP's advice and were not considered relevant to SCAP's role in advising the Minister. My submission is attached, together with the SCAP advice to the Minister.

If the State's highest level planning authority is "not able" to consider anything outside the narrow and formal constraints of the Development Plan, then the system is seriously failing. The two most obvious responses are to either free up planning decision-makers to take climate change impacts into account in addition to other planning policy, or to ensure that planning policy includes consideration of climate change. The latter approach is preferable, however the Draft State Planning Policy on Climate Change does NOT ensure that will happen.

Another issue that has come to my attention recently is in relation to the use of restrictive covenants to force households in new housing estates to connect to and use fossil fuels in their homes. The extract below is from the "Design Guidelines" published by the developers of the "Springlake Estate" in Mount Barker. These form part of a Memorandum of Encumbrance which is registered on the Certificate of Title.

Gas Connection

Springlake is providing reticulated LPG throughout the development. A gas connection will be provided to the front of each allotment. It is mandatory that each house connects to the LPG system.

Minimum gas connection requirement:

- Gas heating
- Gas hot water service

Note: if you will be connecting a solar hot water system, a gas boosted system will be required.

This requirement is clearly at odds with planning policy that seeks to reduce carbon emissions and also household energy bills. There is clear evidence that all-electric homes with solar panels are by far the cheapest households to run. Even all-electric homes without panels are cheaper to run than dual fuel homes.

Again, this has been an issue that planners have ignored as outside their jurisdiction or control. Historically, restrictive covenants have been used to provide an additional layer of control over development. These controls are

over and above those imposed by development assessment authorities and are based primarily in contract law, usually with a view to maintaining quality in new developments over and above the minimum standards set in Development Plans.

I don't know whether this particular restrictive covenant was approved by the Planning Commission (or its predecessor). If it did, then that shows the past inadequacy of planning policy in relation to climate change. If it did not, then it begs the question of whether planning authorities should be able to prevent this type of practice. It may be that arrangements like this that are subsequent to development approval are unregulated. If that is the case, then law or policy reform is certainly necessary. My understanding is that the purpose of this encumbrance (restrictive covenant) is to prop up the business case for a proposed new gas pipeline to Mount Gambier. What better way to ensure the profitability of the proposed pipeline than by mandating its use by new residents?

In my submission, the Climate Change SPP should include a provision that precludes this type of practice. With appropriate policy backing in both the SPP and Planning and Design Code, planning authorities would be able to attach conditions to development approvals that prevent developers from mandating fossil fuel use in new homes, because it prevents choice, is harmful to the climate and will ultimately cost householders more to heat their homes.

I look forward to seeing these issues addressed in subsequent drafts.

Yours faithfully,

Mark Parnell MLC, LLB, BCom, MRUP
(Member of Environment Resources and Development Committee)

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