

27 November 2019

Planning & Design Code (Phase 2) Consultation
Department of Planning, Transport & Infrastructure

By email: DPTI.PlanningReformSubmissions@sa.gov.au

Dear Consultation Team

Draft Planning & Design Code – Phase 2 - Submission

Thank you for the opportunity to provide a submission to DPTI on the draft Planning & Design Code (Phase 2) ("**draft Code**").

Background

I am Head of the Environment and Planning practice at Finlaysons Lawyers in Adelaide. I have worked in the area of environmental and project approvals law in South Australia for more than 16 years.

A large proportion of the projects I have been involved with have been developments undertaken by the minerals, energy, manufacturing and wine sectors, in locations in South Australia that will be covered by the Remote Areas Zone and Rural Zone.

Recently, I have assisted in the planning assessment and approval processes of a number of renewable energy projects, involving (variously and in combination) wind power, solar power, battery storage and hydrogen production.

As a consequence, I have spent a significant amount of time in recent years advising on, and assisting clients to comply with, planning provisions applicable to developments of this nature.

It is on the basis of my experience working on these projects that I provide this submission to you.

Part 7 - Land Use Definitions

Battery storage facility is listed in the "includes" column for Renewable Energy Facility in Part 7, but the definition for Renewable Energy Facility appears to only include a battery storage facility where it is associated with the generation of electricity from a renewable source. In order to allow for stand-alone battery storage facilities, Battery Storage Facility should be also listed as a land use definition in its own right (noting that it is defined in the Referrals table in Part 9).

Further, the Referrals table also uses the term Energy Storage Facility, which should be defined.

Solar Power Facility should be defined in Part 7 (consistently with the definition of Wind farm in Part 7, which includes associated storage, transmission and structures).

Hydrogen production

In September 2019, the South Australian Government launched its Hydrogen Action Plan, which sets out key Government initiatives aimed at leveraging the State's wind, sun, land, infrastructure and skills so as to become a world-class renewable hydrogen supplier for both export and domestic customers. A copy of the SA Hydrogen Action Plan is available at:

<http://www.renewablessa.sa.gov.au/content/uploads/2019/09/south-australias-hydrogen-action-plan-online.pdf>.

The initiatives are described in a framework of five strategies for developing a renewable hydrogen supply sector in South Australia:

1. Facilitate investments in hydrogen infrastructure
2. Establish a world class regulatory framework
3. Deepen trade relationships and supply capabilities
4. Foster innovation and workforce skills development
5. Integrate hydrogen into our energy system.

Ideally, the Planning & Design Code, which will be one of the keys to facilitating any form of development, but particularly development of infrastructure, will be written so as to accommodate, if not encourage, renewable hydrogen project development. At this stage, the Code is silent on this activity.

One option for addressing this would be to expand the definition of Renewable Energy Facility to include “manufacturing activities predominantly powered from a renewable source” which would capture renewable hydrogen production, as well as associated value adding activities such as ammonia production and fertiliser production, which are likely to be undertaken utilising renewable hydrogen.

Alternatively, renewable hydrogen production should be added to desired outcomes for the Remote Areas Zone and Rural Zone.

Remote Areas Zone

DO 1 for the Remote Areas Zone lists appropriate development activities for that zone. However, this list has not been fully carried through into DTS/DPF 1.1, which will make interpretation of the Code more complicated and more likely to lead to confusion. For consistency and clarity, Renewable Energy Facility and Energy Storage Facility should be added to DTS/DPF 1.1.

As per the discussion above, renewable hydrogen production should also be listed here if it is not incorporated within Renewable Energy Facility.

Rural Zone

As per DO 1 for the Remote Areas Zone, instead of “generation of energy from renewable sources, this should be “generation and storage of energy from renewable sources”.

Also as per my comments above, DTS/DPF 1.1 should be more consistent with DO 1. In particular, Renewable Energy Facility should be listed.

PO 9.2 appears to have been drafted to specifically support small-scale ground mounted solar power facilities. However, DTS/DPF 9.2 refers to “solar power facilities” and then states that they should not generate more than 30kW. In order to avoid this being misinterpreted to mean that no solar power facilities should be more than 30kW in the entire Rural Zone (which I understand is not the policy intent), the words “solar power facilities:” at the beginning of DTS/DPF 9.2 should be replaced with “small-scale ground mounted solar power facilities:”

General Development Policies – Infrastructure and Renewable Energy Facilities

DTS/DPF 8.1 is expressed as follows:

DTS/DPF 8.1

Wind turbine generators are:

- (a) setback at least 1,200m from the base of the turbine to non-associated (non-stakeholder) dwellings and tourist accommodation;
- (b) setback at least 2,000m from the base of a turbine to any of the following zones:
 - i. Settlement Zone;
 - ii. Township Zone;

- iii. Rural Living Zone; or
- iv. Rural Neighbourhood Zone

with an additional 10m setback per additional metre over 150m overall turbine height (measured from the base of the turbine).

The words “with an additional 10m setback per additional metre...” are aligned with the far-left margin of the page, meaning that the words apply to both paragraphs (a) and (b). I understand that this is not the policy intent, and the words only apply to paragraph (b). In order to correct this, the words need to be indented so that they sit within paragraph (b).

Alternatively, in order to avoid confusion, the paragraph should be reordered as follows:

Wind turbine generators are:

(a) set back at least 2,000m from the base of a turbine to any of the following zones:

- i. Settlement Zone;
- ii. Township Zone;
- iii. Rural Living Zone; or
- iv. Rural Neighbourhood Zone

with an additional 10m setback per additional metre of 150m overall turbine height (measured from the base of the turbine); and

(b) set back at least 1,200m from the base of a turbine to non-associated (non-stakeholder) dwellings and tourist accommodation.

PO 5.1 refers to locating electricity infrastructure “to minimise visual impacts” however the techniques that are listed relate to avoiding interference with native vegetation and biodiversity, which are not related to visual impacts. This PO should be broken into two separate POs, one addressing visual impact, and one addressing native vegetation and biodiversity.

The requirement in PO 8.4 to use recognition systems or physical markers in the minimising of risk to aircraft operations discounts the opportunity to use other methods to manage aircraft risk (including by location of the wind turbines away from flight paths, or arrangements with aircraft operators to turn off or re-orient turbines to provide clear passage for firefighting or aerial spraying). The PO should be simplified to allow for any appropriate measures:

~~“Wind farms turbine generators incorporate recognition systems or physical markers to minimise the risk to aircraft operations.”~~

PO 9.2 contains absolute requirements that solar farms incorporate wildlife corridors and habitat refuges. There will be many cases where these are not appropriate or beneficial (for instance, where the facility is located on cleared land that is not used for wildlife movement. This should be modified to read:

“(a) incorporating wildlife corridors and habitat refuges where appropriate.”

Please do not hesitate to contact me if you have any queries regarding this submission.

Yours faithfully



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[Redacted contact information]