GMW Response to Draft Solar Energy Facilities – Design and Development Guidelines

Introduction

At the Planning Panel hearings in Shepparton in May 2018 GMW was one of the parties who called for the development of Guidelines to clarify the criteria for the development of new solar energy facilities. The draft guidelines were released in October 2018 and are open for public comment until 1 March 2019. GMW welcomes the release of the draft design and development guidelines as an appropriate step in improving the siting of large scale solar energy facilities and we welcome the opportunity to comment.

There are large tracts of farming land outside the declared Goulburn Murray Irrigation Districts (GMID) where the siting of solar farms:

- would not impact on the irrigated agriculture which typically has higher economic returns and is vitally important for our regional communities and the regional, state and national economy.
- would not compromise the public investment in modernised irrigation delivery infrastructure
- would not compromise regional development objectives to retain and attract the return of water usage in the GMID
- would not impact on the communities in the GMID which are typically more densely settled than dry land areas

This document is GMW’s response to the draft guidelines and contains recommendations for further consideration.

Guidelines Applicable to the GMID

The key section of the guidelines applicable to GMW are described in Section 4.3.2 – Assessment criteria for irrigated agricultural land. The key provisions are:

1. Councils should give notice to GMW under Section 52 of the Act of planning application for solar energy facilities in areas serviced by modernised irrigation infrastructure.
2. GMW will provide advice to the relevant council on an assessment of whether the proposed development site is in an area served by modernised irrigation infrastructure and farmed using intensive irrigation.
3. GMW will provide input to the Responsible Authority on the implications of the solar energy proposal on the irrigation system, its viability and sustainability.
4. GMW will prepare maps updated to reflect ongoing adjustments to the irrigation system and provide these maps to guide decision making.
GMW’s Planning Referral Authority Role

Local governments presently give notice to GMW, as an adjoining landowner, of planning permit applications for solar energy facilities.

The guidelines outline that the government proposes to review the role of relevant water corporations in the planning permit application process, to provide GMW with a formal role as a referral authority for specific non-agricultural developments (solar energy facilities) in areas serviced by modernised irrigation infrastructure.

GMW is a referral authority in accordance with the provisions of the Planning and Environment Act 1987 (the Act). There are two types of referral authority under provisions of the Act: a determining referral authority in accordance with Section 55 and a recommending referral authority under Section 52. The draft guidelines outline that Councils should give notice to Rural Water Corporations under Section 52 of the Act of planning application for solar energy facilities in areas serviced by modernised irrigation. The change requires the responsible authority to seek advice from the relevant water corporation. The advice will have the status of recommending, and not determining. It is proposed to give effect to this by amending the State Planning Policy to include reference to a map of the area served by modernised irrigation infrastructure, supported by planning provision changes in order to guide proponents.

In accordance with this formalised role under Section 52 of the Act, the responsible authority would be required to give notice of an application to relevant water corporation (GMW) under the provisions of the planning scheme. As a formal referral authority under Section 52 of the Act, GMW can respond to the application by objecting to the granting of a planning permit, agreeing to the permit without conditions, or consenting to the permit specifying conditions to be included in the response. GMW has 14 days to respond from the date of receipt of the notice.

A responsible authority must consider the recommending referral authority’s advice but is not obliged to refuse the application or to include any recommended conditions. Should the responsible authority adopt the referral authority’s advice and include any specified conditions within the issued permit these conditions become the responsible authority’s conditions.

To guide decision making the draft guidelines outline the assessment criteria for irrigation land. To guide decision making the draft guidelines recommend that State Planning Policy would provide decision makers with clear assessment for water corporations when providing their input to the Responsible Authority on relevant solar farm applications, such as the implications of the proposal on the irrigation system, its viability and sustainability.

The guidelines outline that advice from rural water corporations to the relevant Council will focus on:

- an assessment of whether the proposed development site is in an area serviced by modernised irrigation infrastructure and farmed using intensive irrigation. Areas serviced by modernised irrigation infrastructure are designated in accordance with the guidelines as strategically significant agricultural land as defined in Table 1 - Attributes of Strategically Significant Agricultural Land.
- the implications of specific solar energy facility proposals for the management of the modernised irrigation grid from the relevant rural water corporation.
Pre-application discussions

The draft guidelines strongly encourage proponents to hold pre-application meetings and set out provisions for proponents to engage in pre-planning discussions with the responsible authority, referral authorities and other parties and stakeholders who may be affected or have an interest in the proposal.

Section 4.3.1 states that “when making decisions on the appropriate location of solar energy facilities councils should (our emphasis) require permit applicants to provide an assessment of:

- The agricultural quality of the proposed site
- The amount of strategically significant agricultural land in the council area and in the region
- The potential impact of removing this land from agricultural production

The guidelines continue to state that proponents should (our emphasis) lodge a report on this assessment with the permit application.” We recommend that this requirement is mandated.

The draft guidelines outline that proponents should consider multiple site options within a region. The strategic site selection assessment criteria should provide guidance to determine if a site is suitable for establishing a solar energy facility, including the advantages of the site, any inherent constraints and challenges, and the relevant land use planning policies and provisions that apply.

This process allows the proponent to determine if a site will be suitable for the proposal, to identify issues early in the process, and to obtain any guidance and direction on the proposal. Pre-application discussions are not subject to statutory timeframes or obligations. GMW has provided pre-application advice in relation to five (5) solar farm applications within Moira, Shepparton and Gannawarra councils’ jurisdiction.

GMW proposes that costs are recovered under a “fee for service” arrangement. The proponents would meet the GMW’s costs beyond the provision of basic infrastructure maps and schedules for the property under consideration. GMW would develop and publish a schedule of fees.

Substantial time and cost savings can be realised if it is identified early in the process if a site is suitable for a solar farm development. If so, issues identified can be addressed prior to submitting a formal application and the proponent can proceed with a high degree of confidence. This process is also key to enabling GMW to minimise exposure to irrigators and stakeholders who are averse to the development prior to notice of applications being forwarded to adjoining landowners in accordance with Section 52 of the Act.

Furthermore, if GMW’s planning department reviews the application during the pre-application discussion phase, much of the initial work should be completed and this will assist GMW in meeting the 14 day statutory timeframe to respond under the Act.

Pre-application discussions are integral to assist in averting any potential issues early in the planning stages. We recommend that the pre-application processes be mandated and not left to the proponent’s discretion. We recommend that a fee for service apply to pre-application processes.

Capacity to undertake role of Planning Referral Authority

Up to now, GMW assessed applications based solely on any potential impacts the development may have on GMWs assets and infrastructure, and the ability of GMW to perform maintenance tasks. The draft guidelines increase the scope of considerations to be addressed in a response, as an assessment of whether the proposed development site is in an area serviced by modernised irrigation infrastructure and farmed using intensive irrigation is required. This information is
gathered as part of our assessment to date and we are well experienced in fulfilling the role of a formal Section 52 referral authority.

GMW’s planning department have the necessary systems and tools in place to process, assess and respond to a planning permit application referred to GMW in accordance with the draft guidelines. GMW’s central planning department receives all planning permit applications from the Responsible Authority. These applications are processed utilising an e-planning software package and workflow within the Stakeholder Account Management (SAM) system specifically design and tailored for GMW planning department as a referral authority. Information regarding the property in question is gathered via SAM and Geocortex, and a Connections based Agresso document management system. These systems enable planning to determine if the properties are within GMW’s jurisdiction, serviced by GMW or subject to any connections agreements regarding the status of the channel and any works carried out. For example, is a backbone or backbone extension channel located on the property or services the property? Are there non backbone channel and/or retired channels identified.

This information is then referred to various sections of GMW for comment. Typically, a solar farm application would be referred to Assets, Connections, Property and the relevant area manager. Once all the relevant information and commentary has been received planning will co-ordinate a response and resolve any anomalies.

A channel by channel assessment tool has been developed through the Transformation Project. The maps and data will be generated using this tool to assist the assessments. The guidelines oblige GMW to produce up to date maps on receipt of the application. This is possible however the task will need to be prioritised at short notice.

**Other implications from the guidelines**

As outlined, the draft guidelines seek to provide GMW with a formal role as a recommending referral authority for solar energy facilities in areas serviced by the modernised irrigation infrastructure. These guidelines do not include consideration for any other non-agricultural developments in areas serviced by the modernised irrigation grid. Any expansion of the referral scope to include additional non-agricultural developments within the GMID would increase GMW’s workload. This scenario is not evaluated further.

There are risks and cost implications for GMW as follows:

**Risks**

- The responsible authority doesn’t adopt our recommendations or doesn’t include or modifies GMW conditions.
- GMW may appeal to VCAT if conditions are not included, however this can be a costly and time consuming process.
- The 14 day response period may be too short for complex matters

**Cost Implications**

- The guidelines outline that all maps required to guide decision making will be prepared and updated by relevant water corporations to reflect ongoing adjustments to the irrigation system.
Additional staff resources may be required to respond to an increase in demand for services, the amount is difficult to quantify but could be mitigated by a fee for service arrangement.

What process is GMW comfortable with?

The policy, planning and legislative requirements set out within the draft guidelines provide a solid framework for planning and assessing proposals for solar farms applications for Responsible Authorities and Rural Water Corporations. The guidelines also provide proponents with guidance on the suitability of locations, improving the quality of the development and effectively engaging with and minimising community’s impacts.

The recommendations and assessment criteria provide clear direction regarding how Rural Water Corporations should assess and respond to the solar farm applications. This is a significant improvement as it requires specific consideration be given to the impacts of proposals on irrigated agriculture. The Responsible Authority has the discretion to include GMW’s conditions within the planning permits. We consider that GMW’s response will substantially carry more weight given that policy direction regarding solar farm applications will be thoroughly embedded within the guidelines and State Planning Policy Framework.

Prior to the release of the draft guidelines, GMW made representations to the department outlining GMW’s preference to be a determining referral authority in accordance with Section 55 of the Act, as opposed to a Section 52 referral authority. Under both sections of the Act the process for referral is the same, however the effect of that advice on the final outcome of an application is different for a referral under Section 55. If a determining referral authority objects, the responsible authority must refuse to grant a permit, and if a determining referral authority specifies conditions, those conditions must be included in any permit granted. The conditions placed on the issued planning permit remain the conditions of the referral authority.

At the time our stated preference to pursue this position as a section 55 referral authority was largely made on the basis that under the current planning provisions and legislative framework GMW technically has limited influence or recourse regarding these types of applications in the GMD. However, under the current proposal, GMW is being given the opportunity to significantly inform the outcome of solar farm applications within the modernised irrigation grid. As a Section 52 referral authority GMW has a duty to have regard for the objectives of the planning scheme and the Minister’s Planning directions, without fully taking on the responsibility of balancing the broader planning and policy considerations specific to each region.

Additional criteria to be required of proponent for GMW consideration

We recommend the follow additional criteria be included in the guidelines:

1. Project proponent to state the proposed future irrigation usage for the property and the ownership and future intentions for delivery shares linked to the property and water shares used to provide irrigation to the property.
2. Project proponent’s willingness to engage with GMW and other landowners to amend the irrigation delivery arrangements should these opportunities arise upon consideration of change in land use.
3. Project proponent to demonstrate to GMW that they have considered the land use of the solar farm sites including an evaluation of the quality of the soils. Any low grade soils (group 5 or 6) should be identified.
4. Project proponent to describe the on-farm irrigation infrastructure and whether it is to be altered and any other factors relevant to the return of the land to irrigated agriculture land use in future.

**Strategic Considerations**

GMW will assess the following factors in the development of advice to the Responsible Authority on the implications of the solar energy proposal on the irrigation system, its viability and sustainability.

1. The cumulative effects of additional land being taken out of irrigated land use.
2. The potential to rationalise irrigation infrastructure arising from the change of land use.
3. The potential created by the change of land use to initiate discussions with neighbouring landowners and develop proposals for different service and irrigation infrastructure asset solutions.
4. The potential benefits to other properties arising from the transfer of unwanted delivery shares.

**Concluding remarks**

The proposed guidelines are an important initiative for managing the potential conflict of solar energy facilities and irrigated agriculture in the GMID. GMW is committed to working with DELWP to integrate the GMW’s recommendations and to finalise the guidelines.