Draft Solar Energy Facilities Design and Development Guidelines

Submission

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While this paper aims to broadly reflect the views of local government in Victoria, it does not purport to reflect the exact views of individual councils.
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1 Executive summary

The Municipal Association of Victoria (MAV) welcomes the opportunity to provide a response to the “Solar Energy Facilities – Design and Development Guidelines” (the guidelines). The MAV is the peak body for local government in Victoria. Formed in 1879, we have a long and proud history of supporting councils to provide good government to their communities.

As the guidelines note, local councils will generally be the responsible authority for solar energy facility planning permit applications. We welcome the Victorian Government’s intent in providing additional guidance around the planning requirements for solar farms and in particular the time given for consultation, however there is significant room for improvement.

We also propose that mid-scale facilities, such as community renewable energy facilities, would benefit from clearer controls and guidance in the future.

Our recommendations can be grouped into three categories:

1. Further inclusions to the guidelines
   a. Recognition of the Municipal Strategic Statement
   b. Reverse amenity
   c. Water as a limiting factor
   d. Opportunities for consolidation
   e. Clustering and agri-processing
   f. Significant landscapes and tourism

2. Assistance for responsible authorities
   a. Guidance targeted specifically towards responsible authorities
   b. Model permit conditions
   c. Guidance on s.173 agreements
   d. Further strategic work
   e. Rural Planning Flying Squad

3. Proposed changes to planning provisions
   a. Consideration of transmission lines
   b. Rural Water Corporations as referral authorities
   c. Further detail of elements in the guidelines
2 Background

Victoria has committed to a Renewable Energy Target of 25 per cent by 2020 and 40 per cent by 2025. This target will not be met through wind energy alone, and it is vital that the Victorian Government develop supporting infrastructure in the planning system to facilitate other forms of renewable energy facility development.

While there are currently planning policies and controls in place specifically for wind farms, there is very limited guidance for how to assess applications for other types of renewable energy facilities including solar.

The MAV and its member councils have consistently raised this as a problem facing, local government, industry, and the community at large. As demand for suitable sites to locate solar power generation increases, it is imperative that the assessment of applications has a strong strategic basis and is applied consistently across the state.

Large-scale solar energy facilities are likely to continue to be located in the Farming Zone. This makes it important to establish guidance for how to balance agricultural production against renewable energy as competing land uses. This is complicated further where the land in question benefits from significant investment in modernised irrigation infrastructure.

Upon receiving a request from Greater Shepparton City Council, the Minister for Planning called in four solar farm applications and referred them to a combined panel hearing for consideration. It was intended that not only would this panel process provide advice on those applications, but also be valuable in informing guidance at a state level.

The panel recommended that permits for all four applications be issued. Subsequently, the Minister has advised that one permit will be issued while a decision on the remaining three is deferred to allow further strategic work to take place.

Around the time the draft Design and Development Guidelines for Solar Energy Facilities were released for consultation, the Greater Shepparton Solar Farm Panel Report (the panel report) was also released to the public. We have found the panel report useful in exploring the issues of solar energy facilities in the planning system.
3 Recommendations

3.1 Further inclusions to the guidelines
There are a number of elements which would fit within the current scope of the guidelines which are either not present, or should be discussed in further detail.

1a Recognition of the Municipal Strategic Statement
The guidelines acknowledge the Planning Policy Framework as relevant for consideration of an application. They should also acknowledge and explain the role of the Municipal Strategic Statement (and eventually the Municipal Planning Strategy).

1b Reverse amenity
The guidelines do not address the issue of ‘reverse amenity’, that is the impact neighbouring land uses may have on the solar farm, and implications for those neighbouring land uses which may result. While neighbouring agricultural uses are likely ‘as of right’ under the planning system, there is a risk that they would be disrupted through interventions under other regulatory systems or common law claims.

The panel report acknowledged the potential impact on solar energy facilities by spray drift or dust emission from farming operations. Council had originally proposed that proponents should ‘accept and acknowledge’ these potential impacts through a s.173 agreement. The panel disagreed with this requirement on the grounds that this would not remove the ability for the operator to object to the impacts of surrounding activities, and was thus unenforceable.

While a s.173 agreement may not be an appropriate tool to manage this impact, consideration at the design stage is. We believe that where a solar energy facility is being developed within an agricultural area, the applicant has a responsibility to take reasonably practicable steps to ensure their own amenity is protected from existing or future neighbouring agricultural operations. This would help ensure the solar farm does not unduly impact on the ability of those land uses to continue.

1c Water as a limiting factor
In some irrigated areas available water, rather than land, will be the limiting factor on agricultural production. Consideration should be given as to the overall impact to agricultural production would be if the water allocation from the proposed solar facility site was instead made available elsewhere throughout the irrigation area.

However, care must also be taken to ensure that the removal of agriculture from sites does not undermine the viability and sustainability of the irrigation area and water infrastructure as a whole. Rural Water Corporations are potentially best placed to advise on this aspect.

1d Opportunities for consolidation
The potential impact on opportunities to consolidate farmland should also be considered at a strategic level. Consolidation is an important driver of productivity for broad acre agriculture. Some councils have identified areas where consolidation is supported, a good example is the Campaspe, Greater Shepparton and Moira Regional Rural Land Use Strategy 2008. We don’t suggest that an area where consolidation is encouraged is unsuitable for any solar farm development, but rather that multiple solar farms may cumulatively compromise the ability to undertake that consolidation.

1e Clustering and agri-processing

In addition to opportunities for consolidation, the clustering of agricultural uses can promote efficiencies as well as support secondary economies. In some cases, the link between a local processing facility and nearby primary production may be vital to the viability of not only the processing facility, but the agricultural use as well. Cumulative transition of land to non-agricultural use may reduce the supply to the processing facility to the point where it and the agricultural uses which support them becomes unviable.

1f Significant landscapes and tourism

Some landscapes and sites are more significant than others, whether due to cultural, heritage, or tourism value. In addition to avoiding areas of high heritage significance, it should be clear that the landscape value of the land may warrant additional measures to limit the impacts of the solar farm. This should be addressed in the design response and may include aspects such as increased screening at boundaries.

1g Battery and other storage

Given the nature of solar operations, batteries or other energy storage are potentially a key part of some proposals. While the draft guidelines mention battery and energy storage, they offer no assistance to responsible authorities in assessing these elements.

1h Cumulative impacts

We believe that consideration should be given to potential cumulative impacts of large scale renewable energy facilities. Even in the more mature wind farm sector, this has not been adequately explored. Potential impacts would need to be weighed carefully against principles of equitable development.

3.2. Assistance for responsible authorities

There is significant need for more assistance to responsible authorities in assessing applications for solar energy facilities. The assessment of solar energy facilities is complex, and for many councils will be among the highest value developments within their municipality. Both limited resources and a lack of state guidance on how to assess these applications has placed councils in a difficult position.

2a Guidance targeted specifically towards responsible authorities
Councils have for a long time indicated that they need guidance from the state in how to assess planning permit applications for solar farms. We consider this to be a significant gap in the current system. It is disappointing that these guidelines appear not to be addressing this directly. The guidelines are primarily a document for the proponent of a solar facility. While important, this does not address the most critical issue of responsible authority guidance.

In contrast, the supporting documentation for wind energy facilities, *Policy and Planning Guidelines for Development of Wind Energy Facilities in Victoria*, speaks at length as to what the responsible authority should consider when assessing an application. If anything, there is greater need for guidance for solar facilities than for wind. While the Minister for Planning is the responsible authority for wind energy facilities, individual councils will be assessing solar energy facility applications and thus guidance is required to promote consistent assessment across the state.

While a Planning Practice Note could incorporate this guidance, it would be best located within the guidelines (as is the case for wind energy facilities) to make it more visible to proponents as well. Well crafted guidance to responsible authorities should also assist proponents in further understanding the expectations on their proposal.

2b Model permit conditions

Model permit conditions developed by the state in consultation with councils would go a long way to ensuring that requirements on applications are applied consistently. Model permit conditions covering the following would be a strong start:

- Development plans
- Staging
- Landscaping and visual screening
- Traffic management
- Environmental management plans
- Referral authority conditions
- Decommissioning
- Expiry of permit

2c Guidance on s.173 agreements

The development of s.173 agreements is a costly exercise for councils. Where similar matters will be commonly approached through a s.173 agreement, centralised development of relevant clauses would both be more efficient and increase consistency.

There is also scope for guidance on where in relation to a solar energy facility a s.173 agreement would be appropriate. The panel report highlighted a number of differences in the approach to s.173 agreements between the panel and council and consistency on this would be of benefit to all parties.
Decommissioning and rehabilitation in particular has frequently been dealt with via s.173 agreements. Greater Shepparton City Council sought to utilise a s.173 agreement to require restoration of the site to a state suitable for agricultural use. The panel recommended this could be achieved through a permit condition and thus a s.173 agreement was inappropriate.

It is not clear under the panel's approach whether there would be a positive obligation on the landowner to restore the land in the event that the permit expires following the use being discontinued. While, as the panel noted, the responsibility and burden is unlikely to fall on the community, this is only one of the objectives of the s.173 agreement proposed by council. Use of permit conditions alone may not achieve the other objective of ensuring that the land is restored to a state suitable for agricultural use.

2d Strategically significant agricultural land

We believe that the identification of strategically significant agricultural land should occur at a state and regional level, in partnership with councils. The nature of a strategic consideration of agricultural land requires that it be considered above the level of a single site or municipality. A State-led approach would provide consistency and represent a far more efficient use of resources than requiring identification by individual proponents and assessment on an application by application basis.

Land capability mapping was previously undertaken by the State. We believe that updated land capability studies, including consideration of climate change, would provide a good basis for determining what is considered strategically significant agricultural land.

Once identified, this should be represented in Regional Growth Plans and in planning schemes, ensuring it is given appropriate weight when determining applications. Some Regional Growth Plans currently identify agricultural uses, but this is inconsistent and not comprehensive.

Any strategic determination should also incorporate consideration of climate change impacts, particularly reliable rainfall areas.

We note that the Government made a commitment during the 2018 election campaign to undertake this form of work to protect peri-urban agriculture from development pressures. We believe that given the increased Renewable Energy Target, and the need to locate renewable energy facilities in rural and regional areas to achieve it, extending this across the state would be of great benefit.

2e Further strategic work

In many cases, planning schemes for rural and regional municipalities were developed prior to large scale solar facilities being commercially viable, and due to resource constraints they have not been updated specifically to provide for this new land use. This is an area where targeted funding could yield considerable results.
The Streamlining for Growth Program has been suggested as a potential source of funding for councils to undertake this strategic work. We support this approach and will encourage councils to apply under that program.

2f Rural Planning Flying Squad

 Previously, DELWP has operated a Rural Planning Flying Squad. This was a team of planners who operated across the State to assist resource limited rural councils in undertaking complex or intensive planning tasks. Councils derived tremendous value from this program. We take this opportunity to again request that DELWP investigate reinstating the flying squad, as well as how the squad might be able to assist in assessing applications for renewable energy facilities and preparing strategic policy.

We believe that this concept also applies to technical consideration of proposals. Many elements of a proposal, such as estimated reduction in greenhouse gas emissions, would be far better resourced through centralised expertise within DELWP that is made available to councils, rather than individual councils having to employ specialists on a case-by-case basis. We suspect this expertise may already exist within the Energy or Planning arms of DELWP.

3.3. Proposed changes to planning provisions

In addition to guidelines, there must be amendments to planning provisions to ensure an adequate statutory basis for all relevant considerations regarding solar farm permit applications.

3a Consideration of transmission lines

Transmission lines are significant infrastructure with the potential to affect amenity and safety on a landscape scale, and should be subject to planning permission.

Any proposal for an energy generating facility of scale, whether solar farm or otherwise, must incorporate details of the means by which the electricity generated will be transmitted to the grid. This detail would then form part of the assessment and be open to the community consultation process via the planning permit application.

For projects where the facility is already approved but the connecting transmission lines have not been a subject of the assessment, we request that the State develop as a priority an appropriate mechanism that allows local communities to be engaged in the assessment and approval process. Community engagement in planning processes is vital and in many cases improves both development outcomes and community relations.

Additionally, we request that the State work with councils, industry, and other appropriate bodies such as the Australian Energy Market Operator to address these issues at a strategic level.

3b Referral authorities

We support the proposal contained in the guidelines to make Rural Water Corporations a recommending referral authority for certain types of non-agricultural development in agricultural areas with modernised irrigation infrastructure. However, we also think there is merit in having referral authorities for applications outside of modern irrigation areas. This may be the Rural
Water Corporation, or may be better placed with Agriculture Victoria to assist in considering potential impacts on agricultural land uses and the suitability of site selection.

Energy facilities may also pose an increased fire hazard, and the State should consider whether the Country Fire Authority should be a referral authority to applications as many will fall within either Bushfire Prone Areas or Bushfire Management Overlays.

3c Further detail of elements in the guidelines

The provisions currently under clause 53.13 need to be updated to ensure that there is grounds within planning schemes for considering the matters found in the final guidelines. This may best be achieved by breaking solar energy facilities off to a separate provision, similar to wind farms.