13 October 2021

Mr Matthew Riley
Director, Energy and Resources Policy
Planning & Assessment
Department of Planning, Industry and Environment
Via email: Matthew.Riley@planning.nsw.gov.au

Dear Mr Riley

NSW Infrastructure SEPP amendments – Renewable Energy and Regional Cities

The Clean Energy Council is pleased to provide a submission in response to the New South Wales Department of Planning, Industry and Environment regarding its proposed amendments to the Infrastructure SEPP (**the proposed amendments**) as set out in the Explanation of Intended Effect (**EIE**).

The Clean Energy Council (**CEC**) is the peak body for the clean energy industry in Australia. We represent and work with over 900 of the leading businesses operating in renewable energy, energy storage and renewable hydrogen. We are committed to accelerating Australia's clean energy transformation.

Australia's regional and rural communities play a vital role in the deployment of renewable energy in Australia, and this role will only grow in significance over time in NSW as the state works towards its new target of 50 per cent emissions reduction by 2030 and to implement the *Electricity Infrastructure Investment Roadmap*. We understand the need to allow for the growth and expansion of regional towns.

We also note that renewable energy projects are also important to the growth of regional towns, by providing reliability of energy supply as our electricity system transitions away from traditional gas and aging coal to affordable and clean alternatives, whilst supporting investment and employment in regional communities in the process.

It is therefore critical that proponents work in partnership with local communities in the delivery of new projects. With this in mind, we consider that the proposed amendments do not strike an appropriate balance between regional town growth and the critical support for renewable energy projects. We submit that these proposed amendments may lead to uncertainty, confusion and negative sentiment towards the renewable energy industry and in particular the utility-scale solar sector in New South Wales.

We also consider there is a danger that the proposed amendments will in practice operate as a quasi-prohibition against utility-scale renewable projects near the specified regional centres even where projects can otherwise demonstrate their merit. If this occurred, it would be an unacceptable outcome.

We outline our specific concerns and recommendations below.

Amendments are inconsistent with industry needs and state energy goals

We consider proposed amendments do not demonstrate an understanding of the needs for renewable energy projects and may have inadvertent negative impacts upon these projects. Sites for renewable energy projects are chosen due to their proximity to substations and the high resource potential. Solar farms will be more impacted by the proposed amendments because substations are often located at the fringe of townships. Solar farms must be located close to substations with adequate capacity and cannot carry the cost of an extended connection that a wind farm can typically manage.

The industry acknowledges that urbanised areas are steadily expanding closer to substations located near to the urban fringe resulting in increased tension between land uses. However, we note NSW's energy targets by 2030 and fortunately NSW has an abundant solar resource. Solar farms and the provision of cheap, reliable and green electricity is crucial to NSW and the proposed amendment shows a lack of appreciation for the limited flexibility a developer has in siting these facilities elsewhere, if this industry is to contribute adequately to the required growth in renewables over the next decade.

Furthermore, examination of the existing pattern of development approvals under a merit-based visual and noise assessment, including those supported at the Independent Planning Commission level, demonstrate that solar farms can exist closer to the fringe of a regional city if designed appropriately. Conversely, merit-based assessments for wind farms which take into consideration the typical housing density within the distances proposed in the EIE is less likely to result in a wind farm being located close to a regional centre, regardless of the proposed amendments.

If the proposed amendments result in solar farms being completely unable to build within the distances proposed in the EIE, this will add considerable costs, time and uncertainty to these projects. Additionally, we suggest the proposed amendments could create confusion and a drawn-out assessment period which is harmful to both investors and objectors within a community. Ultimately more projects will need to go through a Panel process, and additional work will necessary undertaken to educate the Panel as to why these projects should be located within this setback. We suggest that a quality and informed merit-based assessment would demonstrate whether the project would create a significant impact, without the significant delay, resources and community angst that may occur with a Panel process.

Additional bureaucracy targeting renewable energy projects

The CEC is also concerned that the application of the proposed amendments to renewable energy projects only – and not on any other form of major infrastructure development in NSW – is not justified and is inequitable. We are concerned that the SEPP in large part implies that potential land use conflicts and visual impacts have not already been considered by proponents and regulators during their assessments of the merit of projects. This may add to negative perceptions of renewable energy projects if they are singled out as being threats to regional growth, not to mention the implication that visual amenities have a negative impact, which is not always the case.

Furthermore, we submit that although the considerations proposed under Amendment 1 are generally already addressed by renewable energy proponents through rigorous planning assessments, the amendment creates yet another consideration that proponents must address and articulate, in addition to the technology-specific guidelines and relevant legislation.

a) Land use considerations

Land use conflict is a matter that is already considered under various aspects of section 4.15 of the EP&A Act. Elevating it to a specific consideration under the SEPP is likely to unreasonably inhibit renewables development because:

- it may give undue weight to the non-renewables approved use without considering and balancing the risks and benefits of each of the proposed renewables use and the existing/approved use;
- it is expressed as an absolute requirement without taking into account any concept of practicability, including:
    - whether an approved use will actually be developed, and the timing of that development;
    - whether reasonable and practicable attempts have been made to modify the proposed project to avoid the land use conflict, or negotiate with impacted landholders or adopt other solutions; and
    - where expert analysis deems that a project will create a significant impact.

We also consider that the second additional matter of consideration is too broad. Renewable energy proponents require certainty on which planning instruments must be considered. Documents to which a proponent and consent authority must have regard should be publicly available, readily identifiable, sufficiently certain and formal/approved. We consider that 'advice from Council' is vague and at risk of subjectivity and inaccuracy.

We recommend that DPIE provide additional certainty by:

- referring to a list of specific publicly available planning documents or requiring that documents to which regard must be had are identified in a planning certificate; or
- at least, removing 'advice from Council' from the criterion.

We also note that part of the justification provided for the proposed amendments is that solar farms 'can also occupy large areas which can preclude the use of land for any other purpose for several decades'. The CEC submits that renewable energy proponents actively avoid highly productive agricultural land wherever possible in planning for their projects. Under the CEC's Best Practice Charter, to which we have around 50 signatories, companies have committed to *'minimising impacts on highly productive agricultural land and explore opportunities to integrate agricultural production'*. Practically, it is also more expensive for developers to buy or lease good agricultural land, and as such, there is no inherent incentive for proponents to seek out this acreage. The Planning Secretary's Environmental Assessment Requirements (**SEARs**) for utility-scale renewable energy projects already require proponents to address the use of agricultural land, the relative quality of that land and the potential for land use conflicts.

The CEC also notes that it is increasingly common for large-scale solar farms to co-exist with agricultural activities. The most common form of 'agrisolar' activity in Australia is sheep grazing, which is very compatible and offers benefits for both the grazier and the asset owner. A recent CEC survey indicated that almost a third of all large-scale solar farms in Australia implement sheep grazing, including the Bomen Solar Farm near Wagga Wagga and the Dubbo Solar Farm. There is also research from the USA and Europe which has shown that solar panels are also compatible with certain horticultural production and can in some circumstances produce improved fruit and vegetable yields. We are now seeing similar research being conducted in Australia.

b) Visual amenity consideration

The justification for the third proposed consideration focuses on the visual impacts of renewable energy projects. We submit that renewable energy proponents are well-aware of the potential visual amenity impacts caused by projects and already conduct rigorous planning assessments, typically

including landscape and visual impact assessments, in order to address these matters in accordance with the NSW Guidelines. These assessments will typically include an assessment of visual impacts along key transport routes. The CEC is currently engaging with the DPIE on a planned update of the *NSW Solar Guidelines* to develop clear guidance around visual amenity impacts including assessment tools, and glint and glare, as well as agricultural land.

The CEC also submits that the criteria in the consideration for the visual amenity poses significant uncertainty for proponents and for communities/regional cities because:

- neither the SEPP nor other instruments define areas of particular landscape significance; and
- the assessment is subjective.

We submit that DPIE should consider amending this consideration to provide additional guidance for proponents, including by providing a mechanism by which land with scenic quality and character is formally identified prior to this criterion applying.

Local environmental plans (**LEPs**) present an appropriate place to identify areas of landscape significance (in the same way that, for example, local heritage areas are identified). The inclusion of a form of scenic landscape overlay within LEPs (similar to how this is applied in other jurisdictions such as Victoria or New Zealand) would allow significant landscapes to be identified and preserved, not only in relation to utility-scale renewable energy developments but in relation to any development that will impact on that landscape. We submit that limiting renewable energy development from a whole landscape perspective should only be done in a considered way.

Protection for renewable energy sites from future zoning changes

The CEC is concerned that there is no discussion in the EIE about the consequences of the possible extension of the B3, R1, R2 and R3 zones in the future. Given that the land use and zoning is within the discretion of local councils, we consider it important that the SEPP ensures that potentially suitable land zones for large-scale renewables (that are currently outside of the distances proposed in the EIE) is protected from the consequences of any zoning changes.

The CEC recommends that any changes to the existing land zoning in the towns listed in the EIE should be made with consideration with regards to the current and future renewable energy sites within those regions, or alternatively that the proposed amendments do not apply where the zoning has subsequently changed.

Standalone definitions should include MW threshold

The CEC recommends that the proposed standalone definitions of utility-scale solar energy system and utility-scale wind turbine system could be improved by including a minimum MW threshold. For example, the CEC suggests that the threshold be 30MW to align with Australian Energy Market Operator's default threshold for imposing scheduling obligations on small generators.

We suggest that the current definition proposed by DPIE may result in anything beyond a behind-the-meter commercial solar installation being captured (e.g. a 1-5MW solar farm in a 2-3ha paddock connected to a local zone substation) and that applying the proposed amendments to these smaller generators could be overly restrictive and burdensome. Some of these smaller developments could make use of low-value, underutilised land around the regional centres, which may be beneficial to the community.

Thank you for this opportunity to provide feedback on the SEPP proposed amendments. Please do not hesitate to contact me on 0432 612 955 or at ltonge@cleanenergycouncil.org.au if you wish to discuss these matters further.

Yours sincerely

Lucinda Tonge
Policy Officer