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Energy in action.

NSW Department of Planning and Environment

State Environmental Planning Policy (Infrastructure) 2007

Submitted online via http://planspolicies.planning.nsw.gov.au

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Dear Secretary,

AGL Submission to the *State Environmental Planning Policy (Infrastructure)* 2007

AGL Energy Limited (**AGL**) welcomes the opportunity to provide a submission to the NSW Department of Planning and Environment (**DP&E**) on the review of the NSW *State Environmental Planning Policy (Infrastructure) 2007* (**SEPP I**) which was opened for public comment in February 2017 (**SEPP I Review**).

AGL supports the NSW Government's commitment to modernise, simplify and improve the effectiveness and usability of the planning system to encourage growth and investment in the state.

The energy sector is undergoing a rapid technological transformation as we transition to a carbon constrained future. AGL supports the NSW Government's commitment to net-zero carbon emissions by 2050 and recognise we must play a leading role in gradually reducing emissions while **maintaining reliable and secure energy supply to NSW**. We agree that modern, efficient infrastructure is vital for the growth, prosperity, and well-being of NSW communities.

This submission:

- draws on AGL's experience and expertise in the planning, development, and operation of energy projects in NSW; and
- focuses on the opportunities available as part of SEPP I Review to ensure that the energy sector is best placed to continue to deliver and operate the energy projects required to support NSW's growing energy needs.

(a) General observations

AGL recognises that the key aims of the SEPP I Review are to make it 'easier and faster to deliver and maintain social infrastructure' by simplifying the approval process whilst ensuring that appropriate levels of environmental assessment and consultation are undertaken for these activities. AGL strongly supports these aims.

The *NSW Renewable Energy Action Plan* aims to provide a 'secure, affordable and clean energy future for NSW'. AGL submits that to deliver this vision, it is imperative that the SEPP I Review further consider and implement measures aimed at further improving the planning framework for NSW energy projects. AGL particularly believes that additional amendments should be made to SEPP I, beyond those currently proposed in the publicly exhibited draft *State Environmental Planning Policy (Infrastructure) Amendment (Review) 2016* (**Draft SEPP I Amendment**), to further:

- simplify and streamline the assessment of electricity generation and transmission infrastructure, including for renewable projects;
- ensure a level playing field for all operators across the energy sector; and

> minimise the risk of significant delays which may otherwise compromise the security and affordability of electricity supply.

(b) Routine maintenance of existing electricity generating works

Division 4 of Part 3 of SEPP I currently contains provisions regulating development for the purposes of 'electricity generating works'. 'Electricity generating works' are defined by reference to the Standard Instrument definition to mean 'a building or place used for the purpose of making or generating electricity'.

Under clause 36 of SEPP I, the routine maintenance of electricity generating works can be carried out by or on behalf of a 'public authority' without consent on any land. This means that those routine maintenance works are subject to assessment under Part 5 of the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**). However, there is no provision of SEPP I which allows the maintenance of electricity generating works to be carried out without consent or as exempt development by electricity generators.

AGL submits that clause 39 of SEPP I should be amended to include the routine maintenance of electricity generating works by electricity supply authorities (including transmission operators, distributors and electricity generators as defined in the *Electricity Supply Act 1995*) as 'exempt development'.

(c) Installation, maintenance, repair, or replacement of electricity generating works

Under clause 43(1)(d)(i) of SEPP I, the installation, maintenance, repair and replacement of existing plant and equipment in an existing fenced area or in an existing building may be carried out as exempt development where it the development is in concurrence with an 'electricity transmission or distribution network'. However, no such provision exists in relation to 'electricity generating works'.

AGL submits that SEPP I should be amended to include a new sub-clause 39(4) which will, in a similar manner to clause 43(1)(d)(i), provide that:

> ***Development in connection with electricity generating works which complies with clause 20 is exempt development if the development is for the purposes of installation, maintenance, repair or replacement of existing plant or equipment in an existing fenced area or in an existing building.***

(d) Alternative Submission – Extend Clause 36 of SEPP I to all electricity generators

In the alternative to AGL's submissions at (b) and (c) above, AGL submits that consideration should also be given to providing a level playing field by extending clause 36 of SEPP I to all electricity generators, and not just to 'electricity generating works' carried out by or on behalf of a 'public authority' (which may currently be carried out on any land without consent).

This could be achieved by (for example):

1. **adding the words 'or electricity supply authority' after the words 'public authority' in clause 36(1);**
2. **amending clause 33 to include a definition of 'electricity supply authority', which definition should be similar to that used in clause 40 but clarify that this also includes an 'electricity generator' as defined under the *Electricity Supply Act 1995* (NSW); and**
3. **to ensure that electricity generators would still be required to undertake assessment under Part 5 of the EP&A Act, inserting a new clause 277(6) into the *Environmental Planning & Assessment Regulation 2000* (NSW):**

   For the purpose of the definition of public authority in section 4(1) of the Act, an electricity supply authority (within the meaning of State Environmental Planning Policy (Infrastructure) 2007) is prescribed, but only so as to allow the electricity supply authority to be a determining authority within the meaning of Part 5 of the Act for development that is permitted without consent under that Policy.

If this option were to be adopted, then AGL would be happy to work with the DP&E to develop a code under clause 244K of the *Environmental Planning and Assessment Regulation 2000* (NSW) to ensure that assessments under Part 5 are conducted appropriately by electricity supply authorities in a manner that supports proper environmental assessment including appropriate community consultation.

(e) Environmental management works in relation to electricity generation works

Certain environmental management works in conjunction with 'electricity transmission or distribution networks' are already classified as exempt development under clause 43(1)(l) of SEPP I. However, there is no similar provision which allows environmental management works to be undertaken as exempt development in conjunction with 'electricity generation works'. This inconsistency should be addressed as part of the SEPP I Review.

AGL submits that SEPP I should be amended to include a new sub-clause in clause 39, similar to the provisions allowing environmental management works to be undertaken as exempt development under clause 43(1)(l). This could state:

Development for the purposes of environmental management works in connection with existing electricity generation works is exempt development if it complies with clause 20.

(f) Amendment to specifications of wind monitoring towers as exempt development

At present, clause 39(2) of SEPP I permits development for the purposes of wind monitoring towers used in conjunction with the investigation or determination of the feasibility of a wind farm (with a generating capacity of more than 1 MW) to be undertaken as an exempt development. To be categorised as exempt development, the development must comply with several standards. Most significantly, the wind tower must not have a height of more than 110 metres, and must be removed within 30 months after its erection is completed.

New wind turbines typically have a hub height of up to 130 metres, and consequently the 110 metre limit on wind monitoring towers which can be undertaken as exempt development does not allow for wind monitoring which reflects the height parameters of new wind farms and does not enable compliance with the assessment requirements, including for noise, under the

DP&E's new *Wind Energy Framework*. Further, feasibility studies to fully inform the development of a new wind farm typically require wind monitoring towers to be installed for up to 5 years in order for statistically significant datasets to be obtained.

AGL submits that clause 39(2) should be amended to allow for development for the purposes of a wind monitoring tower to be completed as exempt development where the tower has a maximum height of 130 metres and it is installed for a maximum of 5 years. That is, clause 39(2)(b) should be amended to read:

(2) Development for the purpose of a wind monitoring tower used in connection with the investigation or determination of the feasibility of a wind farm that has a generating capacity of more than 1 MW is exempt development if:

(a) ...

(b) the tower:

(i) is erected in accordance with the manufacturer's specifications; and

(ii) has a height of not more than 130 metres, and

(iii) is removed within 5 years after its erection is completed...

Other limits contained within clause 39(2) are sufficient for industry and do not require amendment.

(g) Amendment to solar panel exemptions

At present, clause 39(3) of SEPP I significantly limits the solar panel systems which may be installed as exempt development. In particular, clause 39(3)(f)(vi) imposes a restriction of 10 kW for roof top solar systems to be classified as exempt development. The capacity of roof top solar panel system does not, of itself, impose any environmental impact (other than a positive one in that it enables more renewable energy to be produced). Accordingly, this arbitrary restriction has resulted in NSW's planning laws lagging behind the rest of Australia by failing to:

- encourage greater solar energy to meet NSW's commitments under the *NSW Renewable Energy Action Plan*;
- accommodate the more efficient solar panels now being produced and the growth in the commercial solar market in the last couple of years.

AGL submits that clause 39(3)(f)(vi) should be deleted (and not transferred over into the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*) so as to remove the current arbitrary limit on the capacity of roof top solar systems which may be carried out as exempt development.

Alternatively, if a limit on capacity is to be retained then the limit in clause 39(3)(f)(vi) should be increased to 100 kW.

(h) Battery storage exemption

Clause 39(3) of SEPP I does not currently include any express provision which makes it clear that battery storage systems associated with roof top solar systems are exempt development. This is a significant omission given the recent technological advances in this area which have driven strong consumer demand for battery storage systems.

AGL submits that a new provision should be inserted into State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 to clarify that battery storage systems associated with rook top solar systems are exempt development. Again, arbitrary capacity limits should not be imposed on for such battery storage systems.

(i) Electricity networks: clarification of generators as electricity supply authorities

Under clause 41 of SEPP I, certain specified development for the purpose of an 'electricity transmission or distribution network' may be carried out by or on behalf of an 'electricity supply authority' or 'public authority' without consent on any land.

'Electricity supply authority' is defined in clause 40 to mean:

> *A person or body engaged in the distribution of electricity to the public or in the generation of electricity for supply, directly or indirectly, to the public, whether by statute, franchise agreement or otherwise, and includes:*
>
> *(a) an energy services corporation within the meaning of the Energy Services Corporations Act 1995, and*
>
> *(b) a transmission operator or distribution network service provider (in each case within the meaning of the Electricity Supply Act 1995), and*
>
> *(c) Rail Corporation New South Wales constituted under the Transport Administration Act 1988, and*
>
> *(d) the Water Administration Ministerial Corporation constituted under the Water Management Act 2000.*

In line with the amendment proposed at (d) above, AGL submits that the definition of 'electricity supply authority' should be amended to make it clear that this also includes an 'electricity generator' as defined under the *Electricity Supply Act 1995 (NSW)*.

AGL submits that the definition of 'electricity supply authority' should be amended to more clearly extend to bodies engaged in the generation of electricity, by adding the words 'or electricity generator' to clause 40(b) so the clause 40 would relevantly state:

> ***Electricity supply authority means a person or body engaged in the distribution of electricity to the public or in the generation of electricity for supply, directly or indirectly, to the public, whether by statute, franchise agreement or otherwise, and includes:***
>
> ***(a) ...***
>
> ***(b) a transmission operator, distributor or electricity generator (in each case within the meaning of the Electricity Supply Act 1995), and***
>
> ***...***

To ensure that electricity supply authorities would still be required to undertake environmental assessment under Part 5 of the EP&A Act prior to undertaking works without development consent, a new clause 277(6) can be inserted into the *Environmental Planning & Assessment Regulation 2000* (NSW):

> ***For the purpose of the definition of public authority in section 4(1) of the Act, an electricity supply authority (within the meaning of State Environmental Planning Policy (Infrastructure) 2007) is prescribed, but only so as to allow the electricity generator to be a determining authority within the meaning of Part 5 of the Act for development that is permitted without consent under that Policy.***

If this option were to be adopted, then AGL would be happy to work with the DP&E to develop a code under clause 244K of the *Environmental Planning and Assessment Regulation 2000* to ensure that assessments under Part 5 are conducted appropriately by electricity supply authorities in a manner that supports proper environmental assessment including appropriate community consultation.

(j) Rail infrastructure development associated with electricity infrastructure

Under clause 79 of SEPP I, specified development for the purpose of a railway or rail infrastructure facilities may be carried out by or on behalf of a public authority without consent. Further, under clause 82 of SEPP I, development for a range of purposes in connection with railways or rail infrastructure facilities is exempt development if carried out by or on behalf of a public authority. However, 'electricity supply authorities' who own and operate rail infrastructure cannot currently carry out these works without consent or as exempt development under those clauses.

AGL submits that consideration should also be given to providing a level playing field by extending clauses 79 and 82 of SEPP I to also apply to 'electricity supply authorities' (with consequential amendments also being included as outlined at (d) and (h) above).

(k) Emergency sewerage system works

Under clause 107 of SEPP I, development for the purposes of emergency works or emergency maintenance or repairs to protect a sewerage system may be carried out by public authorities as exempt development, provided that the works involve no greater soil or vegetation disturbance than necessary. However, 'electricity supply authorities' cannot carry out the same activities as exempt development and are required to obtain consent for these works.

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AGL submits that clause 107 of SEPP I should be amended to allow electricity supply authorities to undertake the specified sewerage system works as exempt development.

3. Conclusion

As the broader economy transitions to a carbon constrained future, the energy sector will continue to undergo a rapid technological transformation which must be complemented with modern and efficient planning systems and infrastructure.

Overall, AGL commends the NSW Government to modernise, simplify and improve the effectiveness and usability of policies to suit the evolving needs of the NSW planning system and submits, as identified above, further amendments to SEPP I which are required to:

- simplify and streamline the assessment of electricity generation and transmission infrastructure, including for renewable projects;
- ensure a level playing field for all operators across the energy sector; and
- minimise the risk of significant delays which may otherwise compromise the security and affordability of electricity supply.

We would be happy to discuss our submission with DP&E in more detail. Feel free to contact myself on 0422 315 889 or ahussein@agl.com.au.

Yours sincerely,

Amer Hussein

Manager Government & Community Relations