Development Assessment System

Development of wind farms, large-scale solar farms and some battery storage facilities are subject to impact assessment under the *Planning Act 2016* (Planning Act). Impact assessment requires public notification and ensures potential impacts are carefully considered before development applications (DAs) are decided.

A DA must be accompanied by a Social Impact Assessment (SIA) report and each Community Benefit Agreement (CBA) entered into for the project (unless exempted by the Director-General under the Planning Act).

Appeal rights regarding development assessment decisions are available to applicants, as well as submitters who make properly made submissions during public notification. Appeals are made to the Planning and Environment Court.

The Development Assessment system sets out if and how development may occur. Council's role in the development assessment process for renewable energy projects depends on the type and scale of the development.

For developments requiring a SIA, the State Assessment and Referral Agency (SARA) is the assessment manager and will assess the DA as per the *Planning Regulation 2017* (Planning Regulation).

In assessing a DA, SARA will have regard to the council's planning scheme. This ensures that development assessment considers the local planning context. SARA will also assess the development against any relevant State Codes contained in the State Development Assessment Provisions (SDAP) and any other matters prescribed in the Planning Regulation.

For other renewable energy projects, including solar farms generating less than one megawatt of electricity, councils are the assessment manager.

Infrastructure agreements

Key points:

Infrastructure for development can be required, sought and delivered in a variety of ways, including through development-approval conditions, CBAs, infrastructure agreements and general agreements for infrastructure delivery between parties.

The most suitable method for infrastructure delivery will depend on the infrastructure type, and the reason the infrastructure is being provided or altered (for example trunk versus non-trunk infrastructure).

An infrastructure agreement is a voluntary, legally binding agreement under the Planning Act that establishes the obligations for the funding and delivery of infrastructure. An infrastructure agreement is usually between a proponent and a council or another public sector entity.

A CBA is a mechanism to deliver benefits to communities, including benefits over and above the minimum requirements for development.

To the extent of an inconsistency, the content of a CBA prevails over an infrastructure agreement.

Strong infrastructure governance helps proponents understand minimum requirements for development, as well as council expectations for infrastructure-related benefit delivery. Both contribute to smoother assessment processes, community acceptance and improved delivery.

The role of councils in infrastructure agreements, general agreements for infrastructure delivery and CBAs is to ensure they are negotiated in good faith and that they are clear, robust and legally binding.

Infrastructure agreements and CBAs must comply with the requirements set out in the Planning Act.

Energy projects can impact infrastructure planned for under Local Government Infrastructure Plans (LGIPs), including water, sewerage, stormwater, transport networks, parks and community facilities. The Planning Act sets out how development approval conditions and infrastructure agreements may provide for the delivery of these types of infrastructure.

Assessment processes may identify that a renewable energy project will have an impact on existing infrastructure. Both development approval conditions and infrastructure agreements can be used to establish requirements for proponents to upgrade, modify or reinstate infrastructure to address these impacts.

Renewable energy projects may impact other infrastructure types, such as waste management and telecommunication networks. Impacts on these infrastructure types may occur at the construction, operation or end-of-project-life stages. Councils and proponents can work together to identify impacts on these other infrastructure types. Councils may seek to have these impacts addressed or negotiate improvement to infrastructure above existing requirements as a form of community benefit. This may require council, or subject to negotiation, the proponent, to undertake activities to identify, plan and cost infrastructure works or upgrades. CBAs can be used to negotiate and establish arrangements with proponents for works or upgrades to these other infrastructure types.

Clear arrangements and agreements for infrastructure help mitigate unplanned costs to ratepayers, ensure the ongoing quality and safety of infrastructure, and provide the opportunity for delivery of legacy infrastructure improvements.

End-of-project-life planning for renewable projects

End-of-project-life planning requirements and development assessment

A development approval is tied to the land, meaning that the obligation to comply with conditions rests with the landholders and the ongoing operator of the renewable energy facility, who may or may not be the original proponent who sought development approval.

Under the SDAP there are clear performance outcomes for end-of-project-life, which may be conditioned as part of a development approval. Examples include:

- Relevant components of development are decommissioned in a timely and efficient manner, both after completion of construction and the end of operations.
- Landfill removed from site is minimised and re-use, recycling or repurposing occurs wherever possible.
- Disturbance footprints are rehabilitated, and waterways and drainage patterns are reinstated.

Council engagement with proponents can allow them to understand and confirm if end-of-project-life plans are in place, including site remediation, removal of infrastructure and future land use considerations. Development approval conditions can specify end-of-project-life actions and include bonds held as security to guarantee this.

Financial guarantee

Securing end-of-project-life obligations through financial guarantees (for example, bank guarantee) or bonds (for example, security bond or trust fund), is an effective way to ensure funding is available for end-of-project-life activities. Financial guarantees protect landholders by providing a guarantee that ensures end-of-project-life costs are covered in the event the project owner defaults or is unable to make payments.

Planning provisions require that a financial guarantee is in place before starting construction. Landholders should consider negotiating these arrangements as early as possible directly with the proponent.

Options for end-of-project-life planning

There may be other options available at the end of a project's life that councils can discuss with the proponent and landholders. However, these options are subject to commercial decisions and any necessary approvals and agreements.

End-of-project-life activities for renewable energy projects may include:

- disconnection from the electrical grid
- removal and recycling, or disposal, of wind turbines, solar panels and associated equipment
- removal and recycling, or disposal, of battery energy storage equipment
- removal of above-ground components
- removal and recycling of underground cabling or concrete footings
- removal of access roads, gates and fencing (depending on the landholder's preference, if agreed, infrastructure may be retained)
- rehabilitation of the site to its former condition, or as otherwise agreed, and in accordance with any planning or environmental approval obligations.

Importantly, end-of-project-life planning is not just about environmental clean-up, it is about protecting the region's long-term economic and social development goals, including potential reuse of sites or reactivation of infrastructure.

Other approvals, requirements and considerations

Australian Government - Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is Australia's main environmental law, providing a legal framework for the management of plants, animals, habitats and places. These include heritage sites, marine areas and some wetlands. The EPBC Act protects listed threatened and migratory species.

Proponents may need to submit a referral if their project has the potential to impact any matters protected under the EPBC Act. The Department of Climate Change, Energy, the Environment and Water (DCCEEW) manage the environmental referral and assessment process.

While councils do not have a formal decision-making or referral role, councils and community members can make comments on referred proposals. All projects referred under the EPBC Act are listed on the EPBC Act Public Portal, where comments can be submitted and records of all referral and assessment decisions can be found.

Queensland Government - generation authority

A generation authority authorises the holder to connect a generating plant (generally with a capacity of 30 megawatts or greater) to either a transmission, distribution or other supply network once construction is complete. Applications for a generation authority are governed by the *Electricity Act 1994* and administered by Queensland Treasury.

The regulator considers the relevant legislative requirements during an application assessment, including the 'objects of the Act', to determine whether to support or refuse an application.

While councils do not have a formal decision-making role, councils and community members can provide submissions on proposed generation authorities, as part of the application process.

The regulator will publish a notification inviting submissions, which will be accompanied by an information paper available on the Queensland Treasury website. The regulator must consider any submissions received when making the decision to approve or refuse an application.

This resource is not an instrument prescribed by statute and provides no statutory guidance. Any references to policies are not an interpretation of those policies. The material or any part of the material in this resource (including any references to legislation) does not constitute legal advice. This resource should not be relied upon for the making of any decisions or the taking of any actions.