



Environment Protection Authority

GPO Box 2607 Adelaide SA 5001

T (08) 8204 2004

Country areas 1800 623 445

EPA F0001343408

John Stimson
Presiding Member
Planning System Implementation Review Expert Panel

Emailed to: DTI.PlanningReview@sa.gov.au

Dear Mr Stimson

Planning Review Implementation Review – Environment Protection Authority submission

Thank you for providing the Environment Protection Authority (EPA) with the opportunity to make a submission to the Planning System Implementation Review.

The EPA's detailed submission is contained in Attachments 1 and 2. It includes 11 recommendations and supporting comments about the following matters associated with the EPA's interaction with the planning system including provision of timely and efficient development application assessment services:

- The South Australian Government's commitment to action on climate change.
- Essential Infrastructure, Crown and Impact Assessed Development processes.
- PLANSA systems and processes including the E-Planning Portal.

For further information on this matter, please contact Phil Hazell, Manager Planning and Impact Assessment on [REDACTED] or email [REDACTED]

Yours sincerely

[REDACTED]

Kathryn Bellette
Director Policy, Assessment and Finance
ENVIRONMENT PROTECTION AUTHORITY

Date: 14/12/22

Attachment 1 – EPA’s detailed recommendations to the Planning System Implementation Review

South Australian Government action on climate change

The EPA is committed to supporting the South Australian Government’s Climate Change Actions (as approved by the Minister for Environment and Water in November 2022) to help build a strong, climate ready economy, further reduce greenhouse gas emissions and support adaptation to a changing climate. As an independent statutory body with an important role to play in climate change mitigation and adaptation, the EPA will partner, where appropriate, with other government departments, including the Planning and Land Use Services Division of the Department for Trade and Investment, to achieve the South Australian Government’s Climate Change Actions. This includes the following actions relating to the ‘Built and Urban Environments’:

Action 5.1: Strengthen climate smart planning, building and design policies and their implementation in the planning system.

Action 5.2: Embed strategic climate impact assessment into Regional Plans.

Action 5.3: Support development and implementation of stronger climate smart standards in the National Construction Code.

Action 5.4: Promote opportunities to encourage the private and public sector to go ‘beyond compliance’ in climate smart design.

Action 5.9: Develop improved policies, tools and guidance for the new planning system to achieve greener and cooler neighbourhoods.

As part of its commitment to the South Australian Government’s Climate Change Actions relating to the ‘Built and Urban Environments’, the EPA will be leading implementation of the following action:

Action 5.7: Develop and implement an approach for assessing and regulating climate change risks on development applications referred to the Environment Protection Authority for direction.

The EPA supports the Department of Environment and Water’s (DEW) recommended amendments to the *Planning Development and Infrastructure Act 2016* (PDI Act) and the Planning and Design Code (the Code) to address the need for new development to contribute to reducing greenhouse gas emissions and achieve sustainable development and climate resilient outcomes, as contained in its November 2022 submission to the Planning System Implementation Review.

Water Sensitive Urban Design (WSUD) is an important component of adapting to climate change and has some overlap with the EPA’s role in considering water quality risks and impacts. The EPA will continue to engage with relevant bodies to achieve improved WSUD outcomes through the land use planning and development system.

Recommendation 1: That the land use planning and development system is appropriately equipped to enable delivery of relevant South Australian Government Climate Change Actions, including facilitating development with low greenhouse gas emissions, that is climate resilient and incorporates water sensitive urban design.

Essential Infrastructure, Crown and Impact Assessed Development

Crown developments with site contamination risks

The site contamination development assessment scheme (SCDAS), as established under the *Planning Development and Infrastructure Act 2016* (PDI Act), *Planning Development and Infrastructure (General) Regulations 2017* (PDI General Regulations) and Practice Direction 14, only applies to development applications that require planning consent.

As Crown development applications do not require planning consent, they are not subject to the SCDAS assessment processes that apply to other impact assessed development applications which involve a change to a more sensitive use or a land division for a sensitive use. This means that Crown development applications have:

- no proper legal process applying to assessment of site contamination risks;
- no proper process for triggering referral to the EPA;
- no statutory timeframes for referral body assessment purposes if a relevant authority seeks to refer a Crown development application informally to a referral body such as the EPA for technical advice about site contamination risks;
- no statutory power for a referral body that receives an informal referral to ask for more information from the applicant; and
- no referral fee payment to the EPA for any assessment work it may do in relation to informal referrals.

Recommendation 2: That the site contamination development assessment scheme, as established under the PDI Act, PDI (General) Regulations and Practice Direction 14, should apply to Crown development applications.

Essential infrastructure – landfill depots

The EPA advised during the drafting of the PDI Act and through the drafting of the various associated planning instruments that landfill depots should be considered as essential infrastructure. Noting that landfill depots are currently not defined as essential infrastructure in section 3(1) of the PDI Act, the EPA reiterates the need for such developments to be included in the definition of essential infrastructure.

Recommendation 3: That 'landfill depots' should be defined as essential infrastructure under Section 3(1) of the PDI Act.

Impact assessed developments prescribed by regulation

In 2018 the EPA Board endorsed those activities that it considered should be prescribed by regulations as always needing to be designated as 'impact assessed' forms of development (IAD). Multiple factors informed the EPA Board's recommendations, including past major development declarations, recent EPA environmental impact assessment experience, EPA licence fee components, National Pollutant Inventory data, and a jurisdictional comparison.

Attachment 2 contains the activities that the EPA recommended should be prescribed as IAD. Such recommendations are grouped into two categories: (1) Major Infrastructure; and (2) Emissions and Hazardous Industry.

On 22 October 2018, Kathryn Bellette (EPA, Director Strategy and Assessment at that time) wrote to Sally Smith (DPTI, General Manager, Planning and Development at that time) recommending that the EPA Board-endorsed list of activities be prescribed by regulations as always needing to be designated as IAD. To

date, none of the activities recommended by the EPA Board to become IAD have been included in the PDI (General) Regulations, noting that wind farms in marine waters and marinas including more than 100 berths are currently the only forms of development prescribed as IAD in clause 27 (a1) of the PDI (General) Regulations.

The EPA reiterates that the activities listed in Attachment 2 should be added to those already listed in clause 27 (a1) of the PDI (General) Regulations.

Since 2018 the potential disposal of per- and poly-fluoroalkyl substances (PFAS) contaminated wastes in landfill depot facilities has become a significant community, industry and government concern due to the highly persistent and highly mobile nature of these toxic chemicals that have been widely used in a range of industrial and consumer products (including carpets, non-stick cookware and in some firefighting foams) since the 1950's. Due to this risk and the need to carefully locate, design and construct PFAS contaminated waste disposal facilities, the EPA recommends that any new proposed facility of this nature should also go through the impact assessed development assessment pathway.

Recommendation 5: That the activities listed in Attachment 2 and PFAS contaminated waste disposal landfill facilities should be added to the list of impact assessed developments contained in clause 27 (a1) of the PDI (General) Regulations.

Impact assessed development decisions by the Minister for Planning

The *Planning Development and Infrastructure Act 2016* Reform Options discussion paper released by the Expert Panel for the Planning System Implementation Review in October 2022 asked whether the Minister for Planning or the Governor should be the appropriate decision maker for Impact Assessed (ministerial declared) development applications.

The EPA considers that the 'impact assessed' development assessment pathway under the PDI Act is comprehensive, public and transparent and that it would be very rare for a Planning Minister to not deeply consider their final decision with regard to the State Planning Commission's Assessment Report advice and documented positions from all stakeholders/parties, including relevant government referral bodies. A single Minister is accountable and provides a streamlined approach to decision making for 'impact assessed' development applications. For this reason, the EPA supports retention of the current decision-making process.

Recommendation 6: That the Minister for Planning remain as the decision maker for 'impact assessed' development applications rather than being returned to a whole-of-government decision making process.

PLANSA SYSTEM

Adequacy of information received with referrals

Schedule 8 of the PDI General Regulations requires specific information to be submitted for development applications that require a referral to the EPA. The EPA is often referred applications which do not contain adequate details, as per the requirements listed in schedule 8 (ie. those that are relevant to the application/referral).

Examples of referred applications which do not contain adequate details include:

- insufficient detail for the relevant authority to determine which activities listed in Part 9.1 of the *Planning and Design Code* are included in the application

- information which does not contain the items listed in Schedule 8 of the *Planning, Development and Infrastructure (General) Regulations 2017* for activities of environmental significance, and
- applications within a Water Protection Overlay or Mount Lofty Ranges Water Supply Catchment Overlay without any information as to how wastewater is proposed to be managed onsite, noting that this is a key component of the EPA's assessment for this type of referral.

The EPA's request for further information process should not be used to request this information in the first instance. It should be used to request any clarification/additional detail that may be required beyond the mandatory minimum information that should be included in applications prior to being referred. Inadequate detail being received at the time of referral results in inefficiencies which impact on the EPA, applicants and relevant authorities.

Recommendation 7: Planners in relevant authorities should require and collate the relevant basic information listed in Schedule 8 of the PDI General Regulations being contained in development applications prior to referral to prescribed referral bodies such as the EPA.

Improved view of allocated planner/DA status

When viewing a complete list of applications currently being dealt with by the EPA, it is not possible to see at a quick glance which officer is dealing with which application, or what status that application is at. It would be extremely helpful to have a view where team leaders can see who is dealing with which application and what status that application is at, rather than hovering over the 'person' icon in the PlanSA system for each application.

Furthermore, when viewing the list of applications in PlanSA allocated to yourself, it is not possible to easily determine the status of each application. Some applications will require action, and some will be awaiting further information from the applicant.

Recommendation 8: Improve the PlanSA development application processing system to make it more user friendly and efficient for prescribed referral body users.

Assessment clock

The PlanSA development application processing system provides an automated clock that referral bodies can use to determine how many days they have left to assess the application before their assessment response is due to the relevant authority. Unfortunately, there are a number of problems with the assessment clock.

The EPA has 30 business days to complete its assessment of referred development applications. When the EPA considers that information in a development application is inadequate or insufficient it will send the applicant a request for further information (RFI) at which point the assessment clock should effectively stop. Once all requested information has been received the assessment clock restarts.

When further information is initially received, the assessment clock in the PlanSA system is blanked out so it is not possible to see (at a quick glance) how many days remain on the clock. It is the EPA's understanding that this clock does not re-appear unless and until the RFI response is marked as adequate by the EPA in the PlanSA system. For the EPA, this is not a simple matter of checking that all requested documents have been provided as EPA planners need to undertake a detailed review of the adequacy of this information, which often involves internal consultation with other EPA staff. While this is occurring, it is not possible for EPA staff to easily view the assessment time remaining on these DAs. The EPA would like this to be

changed so that the days remaining instantly appears in the PlanSA system when an RFI is responded to (noting that this may change if the RFI response is not considered adequate).

***Recommendation 9:** Review the functionality of the automated clock in the PlanSA development application processing system to ensure it is fully functional and meets the needs of users, including prescribed referral bodies.*

Reconciliation concerns – payments to EPA

The PlanSA system has not been providing development application referral fee payments to the EPA in a timely manner and there is a risk that the EPA may never be paid the referral fees it is owed for some DAs. Sometimes, the EPA receives:

- DAs with no referral fees at the time of referral and the EPA has had to wait in some instances more than a year before referral fees are received; and
- referral fees being paid to the EPA for DAs despite that DA not being referred to EPA yet and, many months later, the fees have been recalled without the EPA even seeing the DA (the EPA assumes that relevant authority has decided that such DA referrals did not need to be referred to the EPA).

It should not be possible for a relevant authority to refer an application to a prescribed referral body without the relevant fee having been paid by the applicant. Referral fee payments to the EPA should be paid in a timely manner.

***Recommendation 10:** That the PlanSA payments system be amended to improve the accuracy and timeliness associated with referral fee payments to prescribed referral bodies such as the EPA.*

Referral body selections for Response Type

When relevant authorities refer DAs to the EPA, there are three selections for 'Response Type' visible for the relevant authority in the PlanSA system (see the PlanSA screen shot below).

South Australian Water Corporation	Responded	Land Division Consent
SPC Planning Services	Responded	Land Division Consent
Environment Protection Authority	Recalled	Planning Consent
Environment Protection Authority	Pending Referral	Land Division Consent

[Link to Schedule 9 of the PG&A Regulations](#)

Referral body 1

Consent this referral is for *

Land Division Consent

Referral body type *

Referral Body

Referral body *

Environment Protection Authority

Response type *

Schedule 9 (3)(3A) Site Contamination

Select One

Schedule 9 (3)(3) Activities of Environmental significance, or development in Mount Lofty Ranges, River

Schedule 9 (3)(3) Land Division near Landfill Waste Depots

Schedule 9 (3)(3A) Site Contamination

Fee Schedule *

Select One

Comment

Noting that there are more than 75 different activities that could trigger a referral to the EPA contained in Part 9.1 of the Planning and Design Code, quite often relevant authorities refer applications to the EPA under an incorrect referral trigger or without any reference to a referral trigger. This frequently results in the EPA declining a referral in the PlanSA system and asking the relevant authority to determine the correct referral trigger by including a description of the relevant activity(ies) described in Part 9.1 of the Code in the Comment box before re-referring the DA to the EPA. As the referral fee paid to the EPA is also often tied to whether a particular development proposal will need to be licenced to operate under the EP Act, clearly identifying the correct trigger for referral to the EPA is critical from the outset.

The EPA has been advising DPTI, AGD and DTI for more than two years that a dropdown list (referencing Class of Development/Activities listed in Part 9.1 of the Code) should be created in the PlanSA system for referral triggers to the EPA in order to reduce confusion between the relevant authority and the EPA. Unfortunately, there has been no such enhancement to the PlanSA system to date and the problems outlined above remain a continuing concern.

Recommendation 11: Create a dropdown list in the PlanSA development application processing system for DA referral triggers to the EPA referenced in Part 9.1 of the Code to improve the user experience, accuracy and efficiency of the system.

ATTACHMENT 2 - Impact assessed development recommendations

Major Infrastructure	
Threshold	Rationale
Energy	
<p>1. Energy recovery from waste – the thermal treatment of waste involving direct combustion of 200,000 tonnes or more per year, or the gasification¹ or pyrolysis² of 50,000 tonnes or more of waste per year</p>	<p>The direct combustion threshold of 200,000 tonnes per year equates to approximately 20% of the waste disposed to landfill in SA each year. Such a plant would have an installed capacity of around 20 MW. The NSW Independent Planning Commission recently refused an energy from waste application (552,500 tonnes/yr) proposed at Eastern Creek.</p> <p>The gasification threshold of 50,000 tonnes is based on the size of small scale plants from international comparisons, which despite the size, have the potential to generate significant public interest due to concerns relating to potential emissions, and especially when utilising municipal solid waste as a feedstock. Whereas, the 50,000 tonnes threshold for pyrolysis would constitute a rather large facility in international terms for this technology, which could generate significant public interest and pose larger risks associated with potential emissions associated with this technology at this scale.</p>
<p>2. Energy generation and storage facilities – using any energy source other than waste with a capacity to generate more than 500 megawatts (MW)</p>	<p>In SA only the Torrens Island gas-fired power station exceeds 500 MW (1,280 MW). Fossil fuel derived electricity generation typically releases pollutants such as oxides of nitrogen, and polychlorinated dioxins with large generators featuring in the National Pollutant Inventory Top 10 emitters for these substances.</p> <p>Based on recent assessments, only the 600 MW Ceres Wind Farm proposed on Yorke Peninsula would have been large enough to trigger the impact assessed development pathway. At this capacity renewable energy generation can have a high impact over a wide scale (such as noise).</p>

Sewerage & waste	
<p>3. Wastewater treatment works – sewage treatment works or community wastewater management systems discharging 1,000 megalitres (ML) or more per year to land or marine or inland waters.</p>	<p>Thresholds derived from the Environment Protection Regulations 2009 maximum environmental management fee units³ for sewage treatment works or septic tank effluent disposal schemes. 1,000ML threshold equates to an approximate treatment capacity equivalent to 15,000 to 20,000 persons (the City of Port Lincoln is within this range).</p> <p>Beneficial wastewater reuse options are limited at these design discharge volumes. Significant odour issues are also common at these treatment volumes.</p>
<p>4. Waste depots –</p> <p>(a) for disposal of solid waste, a depot receiving more than 200,000 tonnes per year</p> <p>(b) for disposal of liquid waste, a depot receiving more than 100,000 kilolitres per year</p> <p>(c) for resource recovery or transfer, a depot receiving more than 200,000 tonnes per year</p> <p>(d) for mechanical and biological treatment, a depot receiving 25,000 tonnes or more per year of municipal solid and/or commercial and industrial waste.</p>	<p>Thresholds derived from the Environment Protection Regulations 2009 maximum environmental management fee units for waste or recycling depots. Classified as large landfills. NAWMA Balefill at Smithfield Quarry was declared a major development at two million tonnes (over the life of the land fill).</p> <p>Mechanical and biological treatment of waste can generate physically and chemically contaminated residual wastes.</p>
Port facilities & dredging	
<p>5. Port or wharf facility – capable of handling materials into or from vessels at a rate exceeding 10 million tonnes per year</p>	<p>A throughput exceeding 10 million tonnes is likely to include bulk ores or minerals. Port or wharf facilities are generally constructed in sheltered environments such as rivers, bays and estuaries. These areas are usually ecologically significant and are known to be more sensitive to the influx of pollutants.</p> <p>Past major projects include the bulk exports ports of Cape Hardy (30 million tonnes/yr) and Port Bonython (50 million tonnes/yr). The combined throughput of</p>

	all berths at Port Adelaide exceeds 10 million tonnes/yr.
<p>1. Dredging -</p> <p>(a) located in, or likely to impact, a specially protected area (covered by River Murray Act 2003, Adelaide Dolphin Sanctuary Act 2005, Marine Parks Act 2007), or sensitive receiving environment and extracts more than 500,000 cubic metres; or</p> <p>(b) 1,000,000 cubic metres elsewhere in the State.</p>	<p>Dredging on this scale would likely occur every day for many months with a risk of turbidity and mobilisation of contaminated sediments. The lower threshold for specially protected areas or sensitive environments reflects the communities' expectations for assessment scrutiny in these areas.</p> <p>Dredging more than 1 million m³ is uncommon in SA.</p>
Desalination	
<p>7. Desalination –</p> <p>plant for the production of desalinated water for drinking water supply purposes discharging:</p> <p>(a) 10,000 ML or more per year to marine waters</p> <p>(b) 500 ML or more per year to inland waters or land (other than to a wastewater lagoon).</p>	<p>Thresholds derived from the Environment Protection Regulations 2009 maximum environmental management fee units for desalination. The Adelaide Desalination Plant (ADP) is capable of exceeding a discharge of 10,000 ML/yr.</p> <p>(Apart from the ADP, Nyrstar and Olympic Dam are the only facilities in the state capable of exceeding a discharge of 500 ML/yr although for process water rather than drinking water supply purposes).</p>

Emissions and hazardous industry

Emissions and hazardous industry should be classified as impact assessed development where there is high potential of serious environmental harm (including where the proposal seeks to avoid or minimise existing or predicted serious environmental harm) arising from an activity of environmental significance (or multiple activities) having regard to the following factors:

- a. the nature (amount, toxicity or characteristic) of any waste or pollution produced by the activity
- b. the current state of technical knowledge and likelihood of successful application of the various pollution and waste control measures that might be taken
- c. the sensitivity of likely affected populations
- d. the sensitivity of the receiving environment including the location of the activity relative to *specially protected areas* (covered by the *River Murray Act 2003*, *Adelaide Dolphin Sanctuary Act 2005*, *Marine Parks Act 2007* and water protection areas declared under the *Environment Protection Act 1993*)
- e. the likely extent of impacts having regard to their type, size, scope, intensity and duration, and
- f. the degree to which impacts are predictable.

