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## Consultation on draft Protection of the Environment Operations Amendment (Wind Farms) Regulation 2012

EDO NSW welcomes public consultation on proposed amendments (**the draft regulation**) which would add large wind farm developments as a 'scheduled activity' regulated by the *Protection of the Environment Operations Act 1992* (NSW) (**POEO Act**).<sup>1</sup> We understand that this proposal is aimed at regulating *noise pollution* from large wind farms.<sup>2</sup> While noise impacts are real, EDO NSW also notes the important findings of the NHRMC and the CSIRO in relation to wind farms that: 'There is currently no evidence linking noise impacts with adverse health effects'.<sup>3</sup>

While we can see merit in using the expertise of the Environment Protection Authority (**EPA**) in regulating large wind farm developments, it is also relevant to consider how the broader regulatory context can encourage or discourage development of renewable energy in NSW and Australia. In the context of climate change and its likely consequences for Australia's environment and society, EDO NSW supports the rapid and sustainable development of renewable energy. This policy aim should also be embedded in NSW regulatory policies.

EDO NSW has commented on a number of recent State and federal initiatives that intersect with renewable energy and environmental planning policies.<sup>4</sup> This includes the NSW draft *Wind Farm Planning Guidelines* (2011); the NSW Government's draft *Renewable Energy Action Plan* (2012) (**REAP**); the NSW *Planning Green Paper* (2012) and the legislated federal *Renewable Energy Target* (**RET**) to receive at least 20% of electricity from renewables by 2020. Australia's current percentage of renewable power is about 10%, with around 3.5% from wind and solar.<sup>5</sup>

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<sup>1</sup> The current regulation of 'general electricity works' under the POEO Act excludes wind and solar power (Schedule 1, clause 17(1)). The draft regulation would amend Schedule 1 of the Act to include large wind farms, as defined in the amendments (see below); and amend the Protection of the Environment Operations (General) Regulation 2009 (**POEO Regulation**) to insert a new schedule of fees.

<sup>2</sup> The amendments to the POEO Regulation define 'electricity works (wind farms)' to include existing wind farms (operating before 1/12/2012) that have a capacity of more than 30 megawatts; or wind farms that have been approved under the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**), either as State Significant Development (**SSD**) under the current law; as a (former) Part 3A major project; or as State significant development under pre-Part 3A provisions. See NSW EPA, 'Questions and answers on wind farm regulation' (2012), Q.1.

<sup>3</sup> N. Hall, P. Ashworth and H. Shaw, *Exploring community acceptance of rural wind farms in Australia: a snapshot* (2012) (**CSIRO (2012)**). See also National Health and Medical Research Council, *Wind Turbines and Health Public Statement* (July 2010).

<sup>4</sup> EDO NSW submissions on Climate Change & Energy policy (including on behalf of the Australian Network of EDOs) and Planning policy are available at: [http://www.edo.org.au/edonsw/site/policy\\_submissions.php](http://www.edo.org.au/edonsw/site/policy_submissions.php).

<sup>5</sup> T. Flannery and V. Sahajwalla, *Generating a renewable Australia* (2012), Climate Commission, Australia, p 4.

In a 2010 report on the projected impacts on this State, the former head of the NSW Environment Department described climate change as ‘one of the most serious challenges we face,’ noting that ‘The decisions we make today will have lasting consequences.’<sup>6</sup> The Australian Climate Commission’s latest report on renewable energy concludes:

*The challenge in front of us now is to turn the enormous potential of renewable energy into implementation at a large scale, as rapidly as we can [at the lowest cost possible]. This is the critical decade to get on with the job.*<sup>7</sup>

### **Objectives of pollution regulation to achieve ecologically sustainable development**

The question of whether, and how, the EPA should regulate wind farms should include the consideration of NSW pollution laws, the EPA itself, and their aims. Two core objectives are:

- ‘to protect, restore and enhance the quality of the environment in New South Wales, having regard to the need to maintain ecologically sustainable development’ (**ESD**); and
- ‘to reduce the risks to human health and prevent the degradation of the environment...’<sup>8</sup>

Under the POEO Act, ways to reduce risks and prevent environmental degradation include:

- ‘the use of mechanisms that promote [among other things] pollution prevention and cleaner production;’ and
- ‘the making of progressive environmental improvements, including the reduction of pollution at source’.<sup>9</sup>

These aims and functions should guide the EPA’s regulation of electricity works.

If listed as a licensed activity, given their potential contribution to climate change mitigation, wind farms could be one of the only scheduled activities that, by their continued expansion, would actually *support* the objects of NSW pollution laws noted above.

### **Regulatory policies should encourage sustainable development of clean energy**

Noting that NSW pollution laws aim to protect the environment and to maintain ESD, regulatory policies that encourage (rather than hinder) the emergence of cleaner energy production and industry are essential – both to address our contribution to climate change, and make the transition to a low carbon-polluting economy.<sup>10</sup> That approach is also consistent with the NSW State Plan target to ‘*increase renewable energy*’, which in turn includes: ‘contribute to the national renewable energy target’, ‘reducing coal dependence’, and ‘moving to lower emission energy sources.’<sup>11</sup>

Both CSIRO and NSW Government studies document high levels of community support for wind power, ranging from 65% to 85% of people surveyed.<sup>12</sup> At the same time, the social and environmental impacts of renewable energy projects must be appropriately managed in

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<sup>6</sup> NSW Department of Environment, Climate Change and Water (DECCW), *Climate Change and NSW Climate Impacts Profile* (2010), Director General’s foreword.

<sup>7</sup> Flannery and Sahajwalla, *Generating a renewable Australia* (2012), Climate Commission, Australia, pp 1, 19.

<sup>8</sup> See *Protection of the Environment Administration Act 1991 (POEA Act)*, s 6(1) & (2); POEO Act, s 3(a) & (d).

<sup>9</sup> POEO Act, s 3(d)(i) and (iv).

<sup>10</sup> See Ernst & Young, *Business opportunities in a low carbon economy* (Sept. 2010), report for Industry and Investment NSW on behalf of the NSW Innovation Council, <http://www.business.nsw.gov.au/innovation-and-research/innovation-in-nsw/innovation-resources-and-publications/cross-sectoral-analyses> (accessed 1/2013)

<sup>11</sup> NSW Government, *NSW 2021* (2011), available at [www.2021.nsw.gov.au](http://www.2021.nsw.gov.au). See targets under ‘Goal 22 – Protect our natural environment’, p 44.

<sup>12</sup> See CSIRO (2012), p 15. In a 2006 CSIRO survey, 65% agreed with the growth of large-scale connected wind farms in Australia. In a 2010 NSW Government-commissioned survey of over 2000 people and 300 businesses in regional NSW, 85% supported wind farms; 60% supported them at 1-2 km from their home.

order to maintain and build community acceptance. This community acceptance of the technology is 'vital to the continued development of the wind industry in Australia.'<sup>13</sup>

EDO NSW submits that these two policy aims should be the basis of the NSW Government's approach to regulating wind farms and other renewables – that is, accelerating the development of clean energy sources; while ensuring that environmental and social impacts remain within acceptable limits (in particular through effective community engagement). The regulatory approach should also acknowledge the public benefits of emissions reduction.

The explanatory material to the draft regulation could be clearer in this regard. On one hand, the *Questions and answers* note the proposed administrative fees are 'considerably less' than for other, more polluting electricity works. (EDO NSW strongly supports this approach.<sup>14</sup>) On the other hand, the material states that wind farms will not be 'treated differently' to other industries.<sup>15</sup> We agree that regulators should treat industries based on objective standards. Nevertheless, there are sound environmental reasons to build-in transparent protocols that encourage clean industries over more polluting ones. This is consistent with the EPA's legislative objectives for achieving ESD – including 'improved valuation, pricing and incentive mechanisms' and the 'polluter pays' principle.<sup>16</sup>

### ***Regulatory policy should encourage community renewable energy projects***

EDO NSW supports regulatory policy that facilitates the entry of small community-owned wind farms into the NSW energy landscape. There is research to suggest that smaller-scale wind farms tend to be more easily accepted by a community than larger ones. In particular, the characteristics of small-scale, community-owned wind farms mitigate many of the potential negative impacts associated with wind farm projects.<sup>17</sup> We note that under the draft regulation, future small-scale wind farms that do not meet the 'SSD' threshold will be regulated by local councils, not licensed by the EPA.

### ***Consider a fee structure that rises with noise impacts, not energy production levels***

For projects that are proposed to be EPA licensed, it could be considered whether administrative fee thresholds based purely on the amount of *energy* that wind farms produce (in gigawatt hours (**GWh**)) – as distinct from their actual *noise pollution* impacts on nearby residents – may create a disincentive for investment in large wind farms.

This is important in the context of renewable energy, because the larger the amount of renewable energy produced, the greater the potential benefit of climate change mitigation by displacing fossil fuels.<sup>18</sup> In saying this however, we understand that the highest proposed fee threshold is for >4000 GWh generation (150 fee units, currently \$16,950),<sup>19</sup> and the CSIRO

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<sup>13</sup> Australian Government's Environment Protection and Heritage Council, *Report on Impediments to Environmentally and Socially Responsible Wind Farm Development* (2008), cited in CSIRO (2012), p 15.

<sup>14</sup> The draft regulation's explanatory materials note that noise impacts are the primary reason for the EPA to regulate large wind farms; that environmental impacts are likely to be fewer than those for other general electricity works'; and that wind farms have 'no assessable pollutants' for load based licensing purposes. See NSW EPA, 'Questions and answers on wind farm regulation' (2012), Q's 2, 8 and 9.

<sup>15</sup> Ibid, Questions 8 and 10.

<sup>16</sup> See POEA Act, subss 6(2)(d) and (2)(d)(i): 'polluter pays – that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement.'

<sup>17</sup> CSIRO (2012), pp 56-57, 68.

<sup>18</sup> As the CSIRO (2012) puts this, p 14: 'For every additional unit of wind power entered into the electricity grid it replaces one unit of power almost exclusively from a gas or coal-fired power station (McLennan, Maganasik & Associates [MMA], 2009.'

<sup>19</sup> NSW EPA, 'Questions and answers on wind farm regulation' (2012), Q.8.

estimates the current total generating capacity of wind farms Australia-wide is around 5000 GWh.<sup>20</sup>

Although the proposed fees are in the low range, it may still be appropriate to consider the feasibility of a fee structure for wind farms that is more closely tied to the actual noise pollution impacts on any neighbours (or impacts predicted in the environmental impact statement). The location of a particular wind farm will have a large bearing on these impacts. Variables such as geography and weather can affect the level of noise impacts from wind farms, as can the age and type of technology used, and noise mitigation in project design.<sup>21</sup> These variables may be just as important as wind farm size in determining noise impacts.

### ***Clarify policy interactions, and integrate renewable energy policy into planning laws***

In recent submissions, EDO NSW has emphasised the importance of integrating renewable energy policy and climate change readiness into planning laws. The same can be said for regulating renewables generally. Proper integration would herald a range of benefits for coherent and effective climate change, environment and planning policies. This is also consistent with the object of the POEA Act 'to provide integrated administration for environment protection', and the achievement of ESD through 'the effective integration of economic and environmental considerations in decision-making processes'.<sup>22</sup>

The explanatory material to the draft regulation does not explain its relationship to other government policies, particularly the draft NSW *Wind Farm Planning Guidelines* (2011). However, Appendix B (noise guidelines) to the 2011 draft Guidelines does note an intention to give the EPA a regulatory role for large wind farms. This relationship could be clarified in future explanatory material; along with the EPA's and OEH's role in renewable energy policy.

EDO NSW has previously expressed significant concerns about the draft Wind Farm Planning Guidelines, noting that they would create prescriptive and inappropriate double standards; may discourage investment in wind energy; and pose difficulties in meeting government aims and policies on renewable energy, climate change and health. Relevant recommendations from the EDO's submissions on the draft Wind Farm Guidelines and the draft REAP are excerpted at **Attachment A**.

As the Climate Commission notes, 'Investment growth will most likely occur where there is a sufficient level of certainty that future policies will encourage, rather than constrain, renewable energy use.'<sup>23</sup> Emphasising the importance of community input in planning decisions, the CSIRO report on rural attitudes to wind farms also found: 'The alternative of more prescriptive rules and processes to protect perceived community interests can risk forgoing developments that could deliver local benefits and achieve local support.'<sup>24</sup>

In our view, prescriptive regulatory policies that discourage investment in renewable energy would also contradict the aims of our pollution and planning laws – to protect the environment, promote human health and encourage ecologically sustainable development.

I hope you find these comments of assistance. If you have any further queries, please contact me on (02) 9262 6989.

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<sup>20</sup> Cited by the CSIRO (2012), p 14, based on 52 operational wind farms across Australia. The Climate Commission's *Renewable energy generation in Australia* (November 2012) cites 59 operating wind farms.

<sup>21</sup> See, for example, CSIRO (2012), pp 36-37; NSW Government, draft *Planning Guidelines: Wind Farms* (December 2011), pp 27, 36.

<sup>22</sup> POEA Act, ss 4(b) and 6(2).

<sup>23</sup> Climate Commission, *Renewable energy generation in Australia* (2012), p 14.

<sup>24</sup> CSIRO (2012), 'Conclusions', p 68.

Yours sincerely,  
**EDO NSW**

A handwritten signature in black ink, appearing to read 'R Walmsley', written in a cursive style.

Rachel Walmsley  
Policy & Law Reform Director

Our Ref: 1275

**Attachment A – Relevant comments from related EDO NSW submissions on the draft NSW Wind Farm Planning Guidelines (March 2012) and the draft NSW Renewable Energy Action Plan (REAP) (October 2012).**

**The EDO's main concerns with the draft *Wind Farm Planning Guidelines* (as reiterated in the EDO NSW submission on the draft REAP) are as follows:**

- The double standard created by the requirement for a 2km setback from houses for wind farm developments (unless the consent of all landowners is obtained), which prohibits development or triggers an additional upfront 'gateway' assessment.
- A strict 35 decibel (**dB**) noise limit that would apply to all NSW wind farms, but not necessarily other development.<sup>25</sup> Indeed, significantly higher noise limits are often allowed for NSW coal mines.<sup>26</sup> The draft guidelines' noise limit is also stricter than those of potential investment competitors.<sup>27</sup>
- EDO NSW supports early and genuine public participation and consultation on *all* forms of development. It is important that wind farms are not penalised by these requirements compared to other development types.
- EDO NSW also supports rigorous environmental assessment, which should reflect the potential environmental and social impact of the development. We are not confident that the draft guidelines reflected this principle when compared with more polluting energy resources that face less rigorous standards.<sup>28</sup>
- Given the potential range of negative environmental and health impacts of developments such as coal mining and CSG, we believe those sources should be subject to more stringent standards. This should occur before, or as well as, targeting new and cleaner industries.<sup>29</sup>

**Relevant recommendations from the EDO's submission on the Draft REAP include:**

- To ensure good governance, the final REAP should clarify:
  - how the Government will coordinate agencies' actions, implementation and reporting;
  - how the REAP will interlink with key NSW Government policy agendas, including infrastructure and transport master plans and the NSW planning review;
  - the membership of the joint renewable energy taskforce (including representation from the Office of Environment & Heritage and the Department of Planning)
  - details on the establishment and resourcing for the Renewable Energy (RE) Advocate, including transparent criteria, independence, relevant expertise and experience.
- The forthcoming White Paper and draft planning laws need to demonstrate an integrated and fully operationalised commitment to ecologically sustainable development and the achievement of environmental outcomes – including by facilitating renewable energy developments, and assessing climate change impacts;

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<sup>25</sup> See *Draft NSW Planning Guidelines: Wind Farms*, pp 6, 29. For other types of development, project-specific noise levels may be set in the consent and licence conditions. The *NSW Industrial Noise Policy* (EPA, 1999) recommends a maximum limit for a rural area as 45 dB at night and 55dB in daytime.

<sup>26</sup> For example, for the Warkworth mine, noise limits are up to 42 dB day and night in Bulga village; the Integra mining complex near Camberwell also has higher cumulative noise limits for private homes.

<sup>27</sup> For example, Victoria (40 dB), South Australia (40dB), New Zealand (40dB), Europe (40-55dB), USA (50dB).

<sup>28</sup> See, for example, table attached to EDO NSW submission on draft wind farm guidelines (March 2012).

<sup>29</sup> EDO NSW has elsewhere highlighted the need to improve assessment, regulation and scrutiny of mining projects in NSW. See, for example, EDO NSW, *Mining law in NSW: Discussion paper* (June 2011); *Submission to NSW Legislative Council Inquiry into Coal Seam Gas* (October 2011).

- Any finalised Wind Farm Planning Guidelines should recognise the beneficial public interest in increasing renewable energy use and investment, and in reducing greenhouse gas emissions; and must ensure renewable energy projects are not disadvantaged compared to non-renewable energy projects, or other jurisdictions' planning requirements.
- The Planning Review White Paper must outline a range of concrete proposals to promote clean industry. This should include a state-wide Planning Policy on *Sustainability* dealing with energy, water, waste and construction efficiency and climate-friendly design (including strengthening BASIX); measures to fast-track green development; full carbon accounting for major projects; integrating low carbon transport and 'green infrastructure'.