

14 March 2012

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Draft NSW Planning Guidelines: Wind Farms

The Environmental Defender's Office (NSW) (**EDO**) welcomes the opportunity to provide a submission on the draft NSW planning guidelines relating to wind farms (**draft guidelines**).

Any standards for wind farm developments should enable the industry to compete on a level playing field. We believe that the draft guidelines would create inappropriate double standards for wind farms when compared with planning approval processes for other energy-related development activities such as coal mining and coal seam gas (CSG) projects. As they stand, the guidelines may have the unintended effect of making investment in wind energy less viable or attractive. The guidelines may also pose difficulties in meeting government aims and policies on renewable energy, climate change and health.¹

The EDO supports rigorous environmental assessment and community participation in the environmental planning process. We believe the level of assessment should reflect the potential environmental and social impact of the development. We are not confident that the draft guidelines reflect these principles. Indeed, they may place clean energy developments at a competitive disadvantage to more polluting energy resources that face less rigorous standards. The attached table (while not exhaustive) highlights some inconsistencies by comparing the planning guidelines proposed for wind farms with the existing equivalent controls for coal mining and CSG extraction.

Specifically, our main concerns are:

- The double standard created by the requirement for a 2km setback from houses for wind farm developments (unless the consent of all landowners in that radius is obtained), which prohibits development or triggers an additional upfront 'gateway' assessment.²

Firstly, this is a far greater setback than those currently required for mining projects such as coal and CSG, which are only up to 200m (see Table 1). This is despite the significant and often enduring impacts of mining projects on environmental quality, amenity, noise levels, land values, human health and land rehabilitation.³

¹ For example, the executive summary to the draft guidelines states that the NSW government has a national target of 20% renewable energy by 2020, and that wind energy is projected to be the most economical form of large scale renewable energy over the next decade (page iv).

² NSW Planning and Infrastructure, *Draft NSW Planning Guidelines Wind Farms*, accessed March 2012, at http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=5yeY6yw_wRE%3d&tabid=205&mid=1081&language=en-AU, p 2.

³ See, eg, EDO NSW, *Mining law in NSW* (June 2011), at http://www.edo.org.au/edonsw/site/pdf/pubs/110628mining_law_discussion_paper.pdf.

Secondly, we are not aware of specific evidence or explanation regarding how this seemingly arbitrary 2km distance was determined. There is no justification for why other energy projects should be subject to *less* stringency than wind farms.

Thirdly, different wind farm projects are likely to have different impacts, due to the size and nature of the project, geographical and environmental conditions. We note the Land and Environment Court has developed a range of conditions for wind farms.⁴ This is a matter for merits assessment in each case.

- A further double standard is the stringent 35 decibel (dB) noise limit that would apply to NSW wind farms.⁵ For other types of development, project-specific noise levels may be set in the consent and licence conditions.⁶ Indeed, significantly higher noise limits are often allowed for coal mines in NSW.⁷ The draft guidelines' noise limit for wind farms is also stricter than other jurisdictions, both in Australia and overseas (see guidelines, Fig. 2).⁸

The perceived need for strict noise criteria under the guidelines is attributed to the particular characteristics of wind turbines and a 'precautionary approach' to health issues.⁹ However, reviews of the scientific literature to date have not identified any positive link between wind turbines and adverse health effects.¹⁰ It thus appears there is no justification for applying more stringent noise criteria to wind farms than those which apply to other development. (By contrast, considerable health impacts of coal mining and power generation continue to be identified, which would warrant such a precautionary or preventative approach.¹¹)

- To improve decision making, the EDO welcomes and encourages early and genuine community participation and consultation on all forms of development.¹² Again though, it is important that wind farms are not penalised by comparison to other types of development. However, we understand the draft guidelines set out a range of more prescriptive requirements¹³ including requirements for a community consultative

⁴ *King & anor v Minister for Planning; Parkesbourne-Mummel Landscape Guardians Inc v Minister for Planning; Gullen Range Wind Farm Pty Limited v Minister for Planning* [2010] NSWLEC 1102

⁵ NSW Planning and Infrastructure, *Draft NSW Planning Guidelines Wind Farms*, pp 6, 29.

⁶ The *NSW Industrial Noise Policy* (EPA, 1999) recommends a maximum limit for a rural area as 45 dB at night and 55dB in daytime, Table 2.1 p 16, at http://www.environment.nsw.gov.au/resources/noise/ind_noise.pdf.

⁷ Eg, 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. See <http://majorprojects.planning.nsw.gov.au/page/>.

⁸ Including Victoria (40 dB), South Australia (40dB), New Zealand (40dB), Europe (40-55dB) and USA (50dB).

⁹ The precautionary principle is a legitimate risk management tool *where there is scientific uncertainty*. See, eg, *Telstra Corporation Ltd v Hornsby Shire Council* (2006) 67 NSWLR 256; (2006) 146 LGERA 10; [2006] NSWLEC 133, at 125.

¹⁰ NHMRC, *Wind Turbines and Health* (July 2010), at

http://www.nhmrc.gov.au/files_nhmrc/publications/attachments/new0048_public_statement_wind_turbines_and_health.pdf; Doctors for the Environment Australia, *Health Effects of Wind Turbines: DEA Position Statement* (July 2011), at http://dea.org.au/images/general/Health_Effects_of_Wind_Turbines_July_2011.pdf *Summary of main conclusions reached in 17 reviews of the research literature on wind farms and health*, Compiled by Prof Simon Chapman, School of Public Health and Teresa Simonetti, Medical School, Sydney University, at <http://yes2renewables.org/2012/02/08/windfarms-health-17-reviews-of-evidence/>.

¹¹ See, eg, WM Castleden et al, "The mining and burning of coal: effects on health and the environment" (2011) *Medical Journal of Australia* 195(6); Physicians for Social Responsibility, "Coal's Assault on Human Health" (2009); M. Fischetti, "The Human Cost of Energy" (2011), *Scientific American*, at <http://www.scientificamerican.com/article.cfm?id=the-human-cost-of-energy>.

¹² Community understanding, input and buy-in is more likely to lead to sound development decisions. See EDO, NCC and TEC joint submission to the Planning Review Issues Paper (March 2012) via www.edo.org.au/edonsw.

¹³ NSW Planning and Infrastructure, *Draft NSW Planning Guidelines Wind Farms*, at http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=5yeY6yw_wRE%3d&tabid=205&mid=1081&language=en-AU pp 6, 9 & 38. 'A community consultative committee will be required for all wind farm applications that are State significant development (SSD)' Cf NSW Department of Planning, *Guidelines for Establishing and*

committee at the assessment stage; and longer consultation periods than for other development. In our view, any proposal to mandate more robust community consultation mechanisms, or extend consultation periods for wind farms to 60 days, should also apply to other forms of State significant development, not only to wind farm developments.

- Finally, to encourage investment in clean energy sources and to increase community understanding of energy issues, the guidelines should include, as a consideration, the beneficial public interest in:
 - increasing NSW and Australia's use of and investment in renewable energy
 - reduction of greenhouse gas emissions and the impacts of climate change.

In conclusion, we note the draft guidelines aim to 'ensure NSW has a consistent, transparent and rigorous assessment process'.¹⁴ We support rigorous assessment standards for *all* forms of large scale and energy-related developments, rather than confining more rigorous standards to wind energy development.

Furthermore, assessment requirements should be tested against the principle that the level of assessment should reflect the potential environmental and social impacts of the particular development. We have elsewhere highlighted the need to improve assessment, regulation and scrutiny of mining projects in NSW.¹⁵ 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 – either before or as well as targeting new and cleaner industries for such standards.

Yours sincerely

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Operating Community Consultative Committees for Mining Projects (June 2007), at http://www.planning.nsw.gov.au/assessingdev/pdf/ccc_guidelines_2007.pdf.

¹⁴ NSW Department of Planning and Infrastructure, *Outline of the Wind Farm Guidelines*, at <http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=GHPKWTJh0r4%3d&tabid=205&mid=1081&language=en-AU>.

¹⁵ See, eg, EDO NSW, *Mining law in NSW* (June 2011); *Submission to NSW Legislative Council Inquiry into Coal Seam Gas* (October 2011); and *Ticking the Box: Flaws in the environmental assessment of coal seam gas projects* (November 2011).

Table 1. Proposed NSW planning assessment requirements for wind farms (under Draft Guidelines) compared with coal mines and coal seam gas extraction – selected issues only

Issue	Wind farm (draft guidelines)	Coal Mine	Coal seam gas (CSG)
Minimum distance to homes without landowner's consent	2 km, or proponent can apply for a Site Compatibility Certificate (SCC) via 'gateway' process. The public has 21 days to comment on SCC application (guidelines p 4)	200 metres (0.2km). See <i>Mining Act 1992</i> (NSW), s 62.	200 metres (0.2km). See <i>Petroleum (Onshore) Act 1991</i> (NSW), s 72.
Specified noise limits	Yes - Not to exceed 35 dB or the background noise by more than 5dB, whichever is the greater (guidelines p 27)	Project specific noise levels may be set in the consent and licence conditions and are also subject to various policies and legislation depending on the source of the noise. ¹⁶ Much higher noise allowances/limits are often prescribed for coal mines (eg Warkworth Mine, Bulga Village) . Specified value depends on Director General's Requirements (DGR) ¹⁷ and policy documents. <i>NSW Industrial Noise Policy</i> (1999) provides recommended noise values as guidance and are not mandatory (eg recommended maximum for residential rural area is 45 dB [night]/55 dB [day]). ¹⁸	
Visual impact assessment required	Comprehensive assessment if SCC required (guidelines p 4)	No specific requirement; depends on DGR (which often will not refer to visual amenity impacts ¹⁹)	No specific requirement; depends on DGR (as with coal)
Community consultation requirements	Minimum 60 days if State significant development (guidelines p 4). Community Consultative Committee will generally need to be established for both assessment and for conditions of approval. ²⁰	Minimum of 30 days for State significant development. See Environmental Planning and Assessment Regulation 2000, cl 83.	

¹⁶ Eg, *NSW Industrial Noise Policy* (1999); *Protection of the Environment Operations Act* (1997); *Noise Control Regulations 2008* (POEO 1997); *NSW Road Noise Policy* (2011).

¹⁷ Eg, DGR for Tarrawonga Mine – requires a 'quantitative assessment of potential for the construction, operational and transport noise impacts, both on and offsite and blasting impacts on people, livestock and property;'

¹⁸ *NSW Industrial Noise Policy* (1999), Table 2.1 p16 and p 3. http://www.environment.nsw.gov.au/resources/noise/ind_noise.pdf

¹⁹ Eg, DGR for Tarrawonga Mine included no specific requirements for visual impact.

²⁰ NSW Department of Planning and Infrastructure, *Draft NSW Planning Guidelines Wind Farms* (2011), p 38.