



# **Submission on draft Wind Energy Assessment Policy**

prepared by

**EDO NSW  
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### **Submitted to:**

#### **NSW Department of Planning and Environment**

Director, Industry and Infrastructure Policy  
GPO Box 39  
Sydney NSW 2001

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### **For further information on this submission, please contact:**

Nari Sahukar  
Senior Policy & Law Reform Solicitor, EDO NSW  
T: 02 9262 6989  
E: [nari.sahukar\[a\]edonsw.org.au](mailto:nari.sahukar@edonsw.org.au)

#### **EDO NSW**

ABN 72 002 880 864  
Level 5, 263 Clarence Street  
Sydney NSW 2000 AUSTRALIA  
E: [edonsw@edonsw.org.au](mailto:edonsw@edonsw.org.au)  
W: [www.edonsw.org.au](http://www.edonsw.org.au)  
T: + 61 2 9262 6989  
F: + 61 2 9264 2412

## Introduction

Thank you for the opportunity to comment on the Department of Planning and Environment's (**Department's**) draft Wind Energy Assessment Policy (**draft Policy**). This submission is divided into four parts:

<b>1. Summary and recommendations .....</b>	<b>4</b>
<b>2. Draft Wind Energy Assessment Policy .....</b>	<b>7</b>
<b>3. Visual Impact Assessment (VIA) Bulletin .....</b>	<b>13</b>
<b>4. Noise Assessment Bulletin (Noise Bulletin).....</b>	<b>18</b>

EDO NSW welcomes the efforts of the Department to resolve uncertainties over wind energy project assessment that have existed since draft Planning Guidelines (**2011 Guidelines**) were exhibited in December 2011.

Our submission on the 2011 Guidelines noted that the proposed restrictions on wind energy were more stringent than for other, more polluting energy sources without clear justification.<sup>1</sup> We recommended starting from a level playing-field in assessment of all major projects, and then considering the need for NSW to transition from a high-carbon polluting economy to a low-polluting one. This is one way the planning system should encourage ecologically sustainable development (**ESD**). This perspective also informs our comments below.

While the Government's 2016 draft Policy retains a focus on visual and noise impacts as the most significant impacts for wind projects, we understand it shifts away from the 2011 Guidelines' approach of buffer zone distances and consultation periods for renewable energy that go beyond other State Significant Development (**SSD**).

We welcome more equitable treatment of wind energy under a risk-based approach. Our comments support risk-based assessment and consistent standards where appropriate. We also make recommendations to ensure decision-makers properly consider the need for NSW to reduce greenhouse gas emissions; and along with other states and territories and the rest of the world, rapidly transition to low-carbon energy, to avoid the dangers of 2 degrees' average global warming.

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<sup>1</sup> EDO NSW *Submission on Draft NSW Planning Guidelines for Wind Farms* (March 2012) - [Download PDF](http://www.edonsw.org.au/planning_development_heritage_policy). Available at: [http://www.edonsw.org.au/planning\\_development\\_heritage\\_policy](http://www.edonsw.org.au/planning_development_heritage_policy).

# 1. Summary and recommendations

In summary, our comments are as follows:

## General comments on draft Wind Energy Assessment Policy

- Aspects of the draft Policy, such as the need to engage local communities early, are a positive move towards leading-practice. These principles should apply equally to other major projects, beyond wind energy.
- A 'risk-based' framework for assessing wind energy should be considered in the context of how other (potentially competing) energy development proposals are assessed. If anything, energy-intensive projects should be subject to more stringent assessment (including of cumulative impacts) given the need to rapidly reduce carbon emissions.
- The final Policy should apply to new projects and modifications, as proposed. Similarly, contemporary noise and other pollution standards should apply to modifications for *other* SSD projects (such as mine extensions), to promote *continuous improvement* in environmental standards for existing development.
- Given its detailed focus on visual and noise impacts, the draft Policy should clarify what *weight* the Government expects authorities and decision-makers to give these factors relative to other impacts (and relative to other major projects).
- The final Policy and Visual Impact Assessment (**VIA**) Bulletin should explain in more detail how principles of ecologically sustainable development (**ESD**) are relevant to wind projects, drawing on the NSW court decision in *Taralga* (2007).<sup>2</sup> In particular, the precautionary principle, inter-generational equity and full environmental costing are relevant in weighing up the benefits of low-carbon energy sources.
- The draft Policy's main gap is the need to explain the public interest in reducing greenhouse gas emissions. The final Policy should give significant weight to this to guide decision-making. While this gap can be addressed in the final Policy, it is exacerbated by a lack of legislated targets for renewable energy or emissions reduction in NSW.
- The final Policy needs to give additional, clear support to the role of renewable energy in reducing NSW's contribution to climate change in four ways:
  - The Policy's objectives should include reducing greenhouse emissions from NSW energy production. This should be given due weight in decision-making.
  - Identify the transition to low-carbon energy under 'Key Issues for wind farm developments' (draft Policy pp 7-8).
  - Engage NSW communities on the significant challenges and opportunities of climate change, particularly for energy. The Policy should highlight the 2015

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<sup>2</sup> *Taralga Landscape Guardians Inc v Minister for Planning and RES Southern Cross Pty Ltd*, at 73-81, 138.

- Paris Agreement, the energy challenges this presents for NSW and its emissions, and the opportunities for wind to be a positive part of the solution.
- Consider planning principles similar to South Australia, Scotland and Europe that aim to prioritise clean energy sources where they are available.
  - Complement the proposed Policy on major wind energy projects with increased guidance and assistance for community and cooperative wind energy.
  - In principle we support the proposal that decision-makers must consider whether a proposed project is consistent with the NSW Renewable Energy Action Plan (**REAP**) objectives, and how it contributes to the 20% by 2020 target.<sup>3</sup> However, this target is ambiguous, and its 2020 expiry will not assist long-term planning.
  - The Government needs to adopt renewable energy targets beyond 2020, and specific long-term and medium-term emissions reduction targets, in law.<sup>4</sup> New targets would enable NSW communities, planning decision-makers and the private sector to make more informed decisions about energy projects.
  - The final Policy's overview document should reiterate the National Health and Medical Research Council's (**NHMRC**) current position that 'there is no direct evidence that exposure to wind farm noise affects physical or mental health.'<sup>5</sup>
  - Further consideration could be given to rehabilitation bonds and enforcement of conditions for decommissioning and rehabilitation.

### Visual Impact Assessment (VIA) Bulletin

- The final Policy should ensure that early visual impact assessment supports good project design, but does not disadvantage wind compared to other energy projects.
- The VIA Bulletin, the final Policy and the Standard Secretary's Environmental Assessment Requirements (**SEARs**), should require tailored engagement with Aboriginal communities, Traditional Owners and representative bodies. The Department should consult Aboriginal organisations such as NSWALC and NTSCorp on the level and types of engagement they recommend.
- To improve community assurance, consider whether preliminary assessment tool 1 ('visual magnitude' of turbines seen from houses) could incorporate factors such as topography upfront, instead of leaving this to the EIS stage.
- EDO NSW supports consideration of cumulative impacts of all types of major projects. For preliminary assessment tool 2 (on 'multiple turbines' visible from houses) the Department should:

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<sup>3</sup> The REAP has 3 objectives to increase renewables investment, community support and expertise.

<sup>4</sup> See further EDO NSW, *Planning for Climate Change: How the NSW planning system can better tackle greenhouse gas emissions* (July 2016),

[http://www.edonsw.org.au/planning\\_for\\_climate\\_change](http://www.edonsw.org.au/planning_for_climate_change), recommendation 1

<sup>5</sup> As cited in the draft Noise Assessment Bulletin, p 9.

- provide further information on why an 8km radius is most appropriate, and whether this distance is used in similar tools in other jurisdictions;
  - consider further the draft requirement to map viewpoints of turbines for an 8km radius (16km diameter) from every local residence *prior* to a request for SEARs.
- Provide additional guidance on how much weight is given to visual impacts (and noise impacts), and to assessment against Visual Performance Objectives. This could draw on principles in the *Taralga* case, above.
    - The Policy should distinguish *visual* impact (e.g. interrupting a view of a mountain from a house) as being qualitatively different from, say, the clearing of an ecosystem or destruction of the mountain itself. Such guidance would reflect risk-based impact assessment and decision-making, and help manage public expectations of the planning process.
    - Clarify the planning principles the Department uses to determine when scenic character should be prioritised and when it should not. These principles need to be applied consistently so as not to disadvantage wind projects.
  - Clarify the proposed treatment of ‘ancillary facilities’ relative to wind turbines. It may be appropriate to incorporate this in upfront assessment, but assessment should be clarified based on a risk-based approach compared with other SSD.
  - Explain what ‘indirect’ visual impacts are, and their significance (VIA Bulletin p 9).

### **Noise Assessment Bulletin (Noise Bulletin)**

- We welcome the intention to ‘promote a planning and assessment framework which is consistent with the standards that apply nationwide’. Such standards should apply consistently to all SSD proposals.
- A risk-based framework should ensure activities in the same risk or impact category receive equal scrutiny, and higher impacts receive greater scrutiny.
- Balancing consistency and risk-based assessment, the final Policy should ensure that noise impact assessment supports good project design, but does not disadvantage wind compared to other more carbon-intensive energy sources.
- References to scientific studies should be cited and clarified in certain sections (for example, with reference to the likelihood of special noise characteristics).

## 2. Draft Wind Energy Assessment Policy<sup>6</sup>

### Welcome efforts to resolve uncertainties and foster early engagement

As noted, EDO NSW welcomes the efforts of the Department to resolve uncertainties over wind energy project assessment. We welcome more equitable treatment of wind energy under a risk-based approach, including the shift away from the 2011 Guidelines' approach of buffer zone distances and extended consultation periods for renewable energy beyond other SSD.

The draft Policy is proposed to apply to all new wind energy proposals classed as SSD, and 'all modification applications' for SSD wind projects. This is appropriate.

Aspects of the draft Policy, such as early community engagement and upfront design considerations, are positive moves towards leading-practice. Like any industry, commercial windfarms need a 'social licence to operate', as well as legal approvals and compliance. Respecting and working with local communities is of mutual benefit.

This part of the submission recommends that:

- Risk-based assessment must consider how other major projects are assessed
- The policy and framework must emphasise the climate-energy challenge and develop clear targets for NSW
- The need to consider planning principles that prioritise renewable energy, and
- Post-2020 targets for renewable energy and emissions should guide the Policy.

### Risk-based assessment must consider how other major projects are assessed

The draft Policy is premised on a 'risk-based' assessment and decision-making framework (p 2). 'Risk-based' implies the greatest impacts deserve the greatest scrutiny. This approach can be considered in the narrow context of windfarms and in the broader context of the energy sector and other major projects.

Overall, the draft Policy's settings should be considered with reference to assessment processes for other, potentially competing, energy project proposals. As a starting point, impact assessment processes (or 'bulletins') for other major energy projects – such as coal mines and fossil-fuel powered generation – should be *at least as rigorous* as windfarm assessment processes, subject to relative risks and impacts.

#### *Weighing up key windfarm impacts*

The Draft Framework focuses on visual and noise impacts as the main identified impacts of windfarm projects. This focus reflects a risk-based approach in the narrow

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<sup>6</sup> This part primarily refers to the *Wind Energy: Assessment Policy Draft for Consultation August 2016*.

sense (i.e. visual and noise impacts are likely to be the most prominent negative impacts of wind energy projects that local communities raise).

However, as noted below, it is unclear what *weight* the Government intends planning authorities (such as the Department) and decision-makers (such as the Planning Assessment Commission) will give visual and noise impacts relative to others, including positive impacts.<sup>7</sup> The final Policy and assessment bulletins should discuss this further, as it will be important for managing all parties' expectations.<sup>8</sup> As noted, the beneficial impacts of low-carbon energy are a key issue. The Policy could also give some guidance on wind energy and co-existing land uses such as agriculture.

### *Weighing up factors in context of the broader energy sector*

Considering risk-based assessment in a broader sense, it is unclear how the positive and negative impacts of wind projects will be evaluated relative to the impacts of *other* energy-generating projects. This is important because there is a significant *positive* impact in transitioning to clean energy and potentially displacing fossil fuel emissions that would otherwise generate power.

As the Land and Environment Court noted in the *Taralga* case (2007), perceptions of wind energy vary. To some, 'the change is stark and negative. ... To others, however, the change is positive... an opportunity to shift from societal dependence on high emission fossil fuels to renewable energy sources.' In that case the Court concluded that 'on balance, the broader public good must prevail.'<sup>9</sup>

We support this, noting that assessment processes must be fair, inclusive and rigorous, but must not disadvantage renewable energy compared with coal or gas mining and power generation. For example, a large windfarm may detract from the amenity or change the view of 'a visually distinctive stand of trees',<sup>10</sup> and this impact should be assessed. However, with reference to ESD principles like intergenerational equity, such impacts are less environmentally serious than a proposal to *demolish* that stand of trees and the ecosystem it supports (and should accordingly be given less weight). Despite the loss of a view, present and future generations still enjoy the forest itself.

As noted above, the final Policy should contextualise the impacts of wind energy in comparison with other energy options. If anything, emissions-intensive projects and their cumulative impacts should be subject to more stringent assessment given the need to rapidly reduce carbon emissions and avoid 2 degrees' average warming.

Yet it is not clear to us that coal mines, gas projects or power plants are always subject to the same degree of 'pre-lodgement' assessment processes or 'assessment bulletins' for specific impacts. For example, mining and coal seam gas exploration do not require a full EIS; and in some situations, activities with

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<sup>7</sup> For example, Visual Performance Objectives, draft Visual Impact Assessment Bulletin, p 12.

<sup>8</sup> For example, we recommend the guidance on departmental assessment on p 15 of the VIA Bulletin be expanded and included in the final Policy. See Climate Council (2016), *On The Frontline*, ch. 2-4.

<sup>9</sup> *Taralga Landscape Guardians Inc v Minister for Planning and RES Southern Cross Pty Ltd* [2007] NSWLEC 59 (12 February 2007), paras 1-3.

<sup>10</sup> An example used in the Draft Policy – Visual Impact Assessment Bulletin, p 18.

environmental risks have been classified as exploration and therefore avoided statutory requirements for public consultation and an EIS.<sup>11</sup>

This comparison is not to detract from the value of early engagement and design for windfarms. Rather, it is to avoid discrepancies in risk-based assessment *across the energy sector*. That is, the planning system should ‘encourage’ ecologically sustainable development through its treatment of lower-impact energy projects. *Expand guidance on Ecologically Sustainable Development (ESD) and Taralga case*

We support the references to ESD principles as a consideration at the decision-making stage, as part of the ‘public interest’,<sup>12</sup> in the draft Visual Impact Assessment Bulletin (p 16). We also support references to the Land and Environment Court’s *Taralga* windfarm decision (2007).<sup>13</sup> The final Policy’s main document should expand on these important touchpoints further, noting that: ‘The principles of sustainable development are central to any decision-making process concerning the development of new energy resources.’<sup>14</sup>

The social and environmental risks of wind energy are in many cases likely to be lower than the adverse impacts of conventional energy – particularly in the context of a need to rapidly reduce carbon emissions to net zero to avoid 2 degrees average warming, and NSW’s position amongst the world’s highest per-capita emitters. This should be recognised in any risk-based assessment framework.

We recommend both the final Policy and VIA Bulletin explain in more detail how specific ESD principles are relevant to wind energy projects, drawing on the *Taralga* decision. In particular, the precautionary principle, inter-generational equity and full environmental costing are relevant in giving due weight to the benefits of low-carbon energy sources.<sup>15</sup>

### *Noise and health*

We recommend the final Policy’s main document include quotes from the NHMRC’s current position that ‘there is no direct evidence that exposure to wind farm noise affects physical or mental health.’ We welcome these comments in the Noise Bulletin (p 9).

## **Emphasise the climate-energy challenge and develop clear targets for NSW**

We welcome the ‘Strategic context’ in the draft Policy (p 2) which notes that: ‘The NSW Government supports the development of a sustainable wind energy industry

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<sup>11</sup> See e.g. *Fullerton Cove Residents Action Group Incorporated v Dart Energy Limited* (March 2013), case summary and judgement available at: [http://www.edonsw.org.au/mining\\_coal\\_seam\\_gas\\_cases](http://www.edonsw.org.au/mining_coal_seam_gas_cases). Depending on the stage and type of development, activities such as mining exploration only require a small-scale Review of Environmental Factors (REF) rather than an Environmental Impact Statement.

<sup>12</sup> Under s. 79C of the *Environmental Planning and Assessment Act 1979* (NSW) (**Planning Act**).

<sup>13</sup> *Taralga Landscape Guardians Inc v Minister for Planning and RES Southern Cross Pty Ltd* [2007] NSWLEC 59 (12 February 2007).

<sup>14</sup> *Taralga Landscape Guardians Inc v Minister for Planning and RES Southern Cross Pty Ltd*, at 73.

<sup>15</sup> See for example, *Taralga Landscape Guardians Inc v Minister for Planning and RES Southern Cross Pty Ltd*, at 73-81, 138. See also *Environmental Planning and Assessment Act 1979*, s. 5(a)(vii).

in NSW’, and ‘recognises the importance of reducing greenhouse gas emissions in energy generation...’.<sup>16</sup> The final Policy should expand on these comments.

To be specific, we recommend four ways that the final Policy should emphasise the Government’s support for the role of renewables, including wind power, in reducing NSW greenhouse gas emissions that contribute to climate change:

- First, identify a new objective of the Policy (p 1) as: ‘to reduce greenhouse gas emissions from NSW energy production’.
- Second, identify the transition to low-carbon energy under ‘Key Issues for wind farm developments’ (draft Policy pp 7-8). The key issues as currently drafted are all negative impacts.
- Third, the Policy should highlight the aims and targets under the Paris Agreement (2015), the energy challenges this presents for NSW and its emissions profile, and the positive opportunities for renewables including wind energy in solving those challenges.<sup>17</sup>
- Fourth, consider specific planning principles to support renewable energy (exemplified in the section below).

Finally, to complement the Policy’s major projects focus, a related and important measure for the Government to pursue is to increase assistance to smaller community or cooperative wind projects. This would build on Goal 2 of the REAP.<sup>18</sup>

### **Consider planning principles that prioritise renewable energy**

Unlike other forms of energy, there is no renewable energy SEPP or strategic statement on renewable energy and planning in NSW. We recommend considering planning principles in South Australia, Scotland and elsewhere that guide the planning system to prioritise renewable energy in appropriate places.<sup>19</sup>

For example, the Scottish Planning Policy states:<sup>20</sup>

*154. The planning system should:*

- *support the transformational change to a low carbon economy, consistent with national objectives and targets, including deriving:*
  - *30% of overall energy demand from renewable sources by 2020;*
  - *11% of heat demand from renewable sources by 2020; and*
  - *the equivalent of 100% of electricity demand from renewable sources by 2020;*
- *support the development of a diverse range of electricity generation from renewable energy technologies - including the expansion of renewable energy generation capacity...*
- *guide development to appropriate locations and advise on the issues that will be taken into account when specific proposals are being assessed;*
- *help to reduce emissions and energy use in new buildings and from new infrastructure by enabling development at appropriate locations...*

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<sup>16</sup> We support similar statements in the Noise Assessment Bulletin (p 2): ‘Wind energy development is a key component of the Government’s commitment to increase renewable energy in NSW.’

<sup>17</sup> See for example, Climate Council (2016) *On the Frontline: Climate Change and Rural Communities*

<sup>18</sup> Goal 2 of the REAP (2013) is to ‘Build Community Support’ for renewable energy (Actions 10-14).

<sup>19</sup> See L. Caripis and A. Kallies, ‘“Planning away” Victoria’s renewable energy future? Resolving tension between the local and global in windfarm developments’ (2012) 29/5 *EPLJ* 415, pp 426, 432.

<sup>20</sup> *Scottish Planning Policy* (2014) <https://beta.gov.scot/publications/scottish-planning-policy/pages/6/>.

The Scottish Planning Policy also aims to maximise the ‘full potential’ of renewable sources, ‘in line with national climate change targets, giving due regard to relevant environmental, community and cumulative impact considerations.’<sup>21</sup> Within this supportive context, specific principles for Onshore Wind require development plans to identify 3 planning areas using spatial frameworks: areas where wind farms are not acceptable, areas of significant protection, and areas for potential development.<sup>22</sup> As previously submitted such principles should also be applied to resource development projects.

## **Post-2020 targets for renewable energy and emissions should guide the Policy**

Clear targets for renewable energy and greenhouse emissions reduction can inform and direct decision-makers’ significant discretion in the planning system. Long-term and intermediate targets can also inform communities, investors, councils and planners. By contrast, the absence of a post-2020 renewable energy target – or any greenhouse emissions reduction target – limits the ways NSW planning decisions will be informed by climate change considerations.

The draft Policy refers to the REAP and the NSW renewable energy target of 20% by 2020 (p 2).<sup>23</sup> In principle we support the proposal that consent authorities consider ‘whether the project is consistent with the objectives of the [REAP] and how the project contributed to the Renewable Energy Target;’ (draft Policy, p 6). However, more is needed to inform decision-makers, communities, developers and others.

We make three comments on climate change targets and how they link to the Policy. For more detail please see our recent paper, *Planning for climate change*.<sup>24</sup>

First, the draft Policy states that the NSW renewable energy target is to ‘contribute to’ the (former) national target of 20% by 2020. This is very different to NSW having its own target of 20% renewable energy by 2020. The draft Policy should clarify how planners, proponents, communities and decision-makers should consider NSW targets and the contribution of wind, when making development decisions.

Second, the NSW Audit Office has been critical of limited progress and monitoring of the renewable energy target.<sup>25</sup> The latest EPA figures note that the share of renewables, while variable, dropped from 12.9% in 2013 to 10.8% in 2014.<sup>26</sup> The Government needs to clarify its monitoring, reporting and review processes to achieve the 2020 target, and how these processes are improving.

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<sup>21</sup> *Scottish Planning Policy* (2014), para 155.

<sup>22</sup> *Scottish Planning Policy* (2014), paras 161-66.

<sup>23</sup> This renewable energy target was first identified in the 2011 State Plan, *NSW 2021*.

<sup>24</sup> [Download PDF](http://www.edonsw.org.au/planning_for_climate_change). Available at: [http://www.edonsw.org.au/planning\\_for\\_climate\\_change](http://www.edonsw.org.au/planning_for_climate_change).

<sup>25</sup> In 2013 the Audit Office highlighted a lack of progress monitoring information and ‘no baseline to compare progress against.’ (<http://www.audit.nsw.gov.au/audit-program/further-audit-information/proposed-topics-for-2014-15/renewable-energy>, accessed March 2016, page no longer available). The Audit Office’s November 2013 energy report ‘energy produced from renewables in 2011-12 declined sharply and the percentage dropped from nine per cent in the previous year to eight per cent.’ By 2014: ‘Black coal continues to be the major source of energy representing over 80 per cent of electricity generation in New South Wales. Approximately 11.6 per cent of energy generated is derived from renewable sources.’ Auditor-General’s Report to Parliament 2014, Vol 5, ‘Electricity’ p 6.

<sup>26</sup> NSW EPA, *NSW State of the Environment 2015*, p 39.

Third, the 2020 target will expire shortly and there is no indication of what will follow. Projects assessable under the final Policy may not be built in time to contribute to this target. Other states and territories have targets to 2025 and beyond:

- South Australia has a target of 50% renewable electricity by 2025;
- Victoria has a target of 40% renewable electricity by 2025;
- The ACT has a target of 100% renewable electricity by 2020;
- Queensland has a target of 50% renewable electricity by 2030.
- All of these jurisdictions except Queensland have climate change legislation.<sup>27</sup>

The Paris Agreement and the NSW Government's membership of The Climate Group's States and Regions Alliance are welcome opportunities for further action – to develop targets and strategies for renewable energy and greenhouse emissions reduction; support these with new climate change legislation; and embed climate change readiness in the planning system.<sup>28</sup>

### **Decommissioning and rehabilitation**

We note the draft policy states:

*The NSW Government's policy is that a wind energy project owner or operator, and not the 'host' landholder, should be responsible for decommissioning and rehabilitation and the end of life of a wind energy project or a particular turbine. Proponents must identify and address all relevant issues for decommissioning and rehabilitation in their project EIS, and include a commitment that the operator will be responsible for decommissioning and rehabilitation.*

It is therefore assumed that there will be relevant conditions in a landholder agreement. However, in the event of a wind farm company going bust, there are may be enforcement issues in the future. Further consideration could be given to rehabilitation bonds.

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<sup>27</sup> See EDO NSW, *Planning for Climate Change* (2016), Table 1: [Download PDF](#).

<sup>28</sup> See further EDO NSW, *Planning for Climate Change* (2016) recommendations 1-14 [Download PDF](#)

### 3. Visual Impact Assessment (VIA) Bulletin

This part of the submission addresses:

- Stage 1: Preliminary environmental assessment (pre-lodgement)
- Stage 2: Assessment and determination
- Assessment by planning authorities – determination and conditions

#### Stage 1: Preliminary environmental assessment (pre-lodgement)

*Community consultation should refer to specific groups including Aboriginal peoples*

The VIA Bulletin suggests early stage consultation can include representative surveys and focus groups with relevant communities. We support the purposes of early communications set out on p 4 of the VIA Bulletin.

The VIA Bulletin doesn't currently contain any specific guidance on identifying Aboriginal stakeholders or tailored engagement. This Bulletin (p 4), the draft Policy (main document section 5) and the Standard SEARs should refer specifically to tailored engagement with Aboriginal communities, Traditional Owners and representative bodies. The Department should consult Aboriginal organisations such as NSWALC and NTSCorp on the level and types of engagement they recommend.

We suggest references to the following in the final Policy or VIA Bulletin:

- The need for specific consultation with local Aboriginal communities and people authorised to speak for Country;
- Best practice assessment and regulation of impacts on Aboriginal culture and heritage, biodiversity, socio-economic development and benefit-sharing;
- That Local Aboriginal Land Councils are significant landholders across the State to be consulted with and involved in benefit-sharing agreements where appropriate.

*Clarify weight given to visual impacts relative to other positive and negative impacts*

The VIA Bulletin strongly emphasises 'landscape character'. For example, it notes that: 'Thoroughly gauging the landscape values of the project area' can help 'design a wind turbine layout that seeks to avoid high impacts on key landscape features and so minimises potential land use and community conflicts' (p 4).

While we agree with this, there is a need to distinguish *visual* impact (e.g. view of a mountain from a house) as being qualitatively different from, say, the clearing of an ecosystem or destruction of the mountain itself. This difference could be explained with reference to *intergenerational equity*<sup>29</sup> – that while the view may change, future

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<sup>29</sup> See for example, *Taralga Landscape Guardians Inc v Minister for Planning and RES Southern Cross Pty Ltd* [2007] NSWLEC 59, para 74. The Chief Judge discusses intergenerational equity in the context of energy. He notes (at 74) that one aim is to 'maintain the environment, including the ecological processes on which life depends, for the benefit of future generations.' Another is to 'as far

generations continue to have the benefit of the mountain and its ecosystems. Such qualifications would reflect the integration of ESD principles, risk-based assessment and decision-making, and help manage public expectations of the planning process.

#### *Preliminary screening tools (p 5)*

The VIA Bulletin includes preliminary screening tools for 'rapid analysis' of two issues, specifically for 'residential viewpoints' in the area: (1) *Visual magnitude*, or prominence in the field of view; and (2) *Multiple turbines*, or cumulative impacts.

*Visual magnitude*: Tool (1) uses turbine height and distance to give an indication of where a windfarm proponent should give detailed consideration to visual impacts on houses. The Department could consider whether this tool could incorporate factors such as topography upfront, instead of leaving this to the EIS stage. This may identify avoided or reduced impacts upfront, and provide additional local assurance.

*Multiple turbines*: Tool (2) proposes an early requirement to map, for each residence, 360-degree views of any wind turbines (proposed, existing or approved) within a radius of 8km. The tool aims to allow 'alternative design solutions to be considered that do not involve the same level of cumulative impact.' (p 7) Where turbines can be seen from more than 2 of 6 sectors (across 360 degrees), specific information must be provided to the Department in the request for SEARs.

The Department could provide further information on why an 8km radius is most appropriate, and whether this distance is used in similar tools elsewhere. We understand '8km' relates to when a turbine recedes from the 'far middleground' (4-8km) into the 'near background' (8-12km) (VIA Bulletin, Appendix 1, p 22).

We recommend further consideration as to whether a requirement to map viewpoints of turbines for an 8km radius (16km diameter) from every local residence, *prior* to a request for SEARs, is proportionate to the potential impact. In particular, the view of multiple turbines in the 'far middleground' (4-8 or 6-8 km) is a different prospect to views in the foreground or 'near middleground' (<4km).

#### *Cumulative impact assessment should apply to all major projects and not disadvantage wind projects*

EDO NSW welcomes consideration of cumulative impacts of all major development types. Cumulative impacts are not unique to wind energy, and have been of particular concern in relation to mining in the Hunter Valley for example. While we strongly support principles of early engagement and minimising near-distance impacts, the nature of wind resources also mean that clusters of windfarm projects across a landscape are likely.

The detailed requirements for cumulative visual impact mapping *prior* to the issue of SEARs is an example where wind energy projects could be seen to be disadvantaged compared with other energy projects. For example, we are not aware

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as practicable, increasingly substitute energy sources that result in less greenhouse gas emissions... thereby reducing the cumulative long-term effects caused by anthropogenic climate change'.

of equivalent 'pre-SEARs' requirements for cumulative impact assessment – whether for visual, air quality, biodiversity or health impacts of mining projects.

We recommend that the Policy ensures that early visual impact assessment processes do not disadvantage wind projects compared to other energy projects in NSW. Improvements to cumulative impact assessment in the planning system should be prioritised according to impacts of projects with the most significant risks.

## **Stage 2: Assessment and determination**

### *Environmental impact statement (EIS) preparation*

The SEARs will require the wind energy company's EIS to comprehensively assess the proposal against a set of Visual Performance Objectives.<sup>30</sup> As part of the EIS, the proponent must prepare a visual impact assessment (VIA). Our understanding of the proposed VIA process is below followed by three comments: weighting of visual impacts in decision-making; consistent treatment of scenic values in departmental policies; and ancillary facilities.

### *Visual Impact Assessment*

The VIA must assess overall impacts, broader landscape impacts, and 'potential cumulative impacts of wind energy developments in the region' (p 9).

There are 3 basic steps to the VIA. First, preparing a 'Visual Baseline Study', with consultation (inputs for the study are listed at Appendix 1 to the Bulletin). This Study is to consider important landscape elements, viewer sensitivity, landscape character, and existing or approved windfarms within 8 km. Second, mapping 'Visual Influence Zones' as low/medium/high using the Visual Baseline Study. Third, undertaking visual performance evaluation with reference to 'Visual Performance Objectives'. The 6 Visual Performance Objectives provide guidance, not hard criteria (p 9).<sup>31</sup>

### *Clarify weight given to visual impacts in a 'risk-based' assessment policy*

We note that the Visual Baseline Study inputs include 'landscape character type' and 'scenic quality'. This focus continues at the Visual Impact Assessment stage discussed below. We consider that landscape amenity is an appropriate consideration – for example, we welcome the use of visual aids such as photomontages (Bulletin Appendix 2, p 25).

Importantly though, guidance is needed on how much weight visual impacts are given relative to other potential impacts. For example, changing a view to a distant waterfall is qualitatively different, and less environmentally harmful, than damming the river that feeds it. Similarly, there is a qualitative difference between visual impacts affecting a distant view and noise impacts that cause significant sleep disturbance in the same house.

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<sup>30</sup> VIA Bulletin pp 8-9; and VIA Bulletin Appendix 2, Table 8, p 26.

<sup>31</sup> They include (VIA Bulletin pp 12-14): visual magnitude, landscape scenic integrity, key features disruption, multiple wind turbine effects, shadow flicker and blade glint, and aviation hazard lighting.

We recommend the Policy provide additional guidance to communities, proponents and decision-makers on how much weight is given to Visual Performance Objectives and related assessment results. This could draw on principles in the *Taralga* case with regard to unreasonable interference with the enjoyment of a landscape, as well as whether moving (or removing) turbines would actually provide tangible benefits.<sup>32</sup>

#### *'Visual Performance Objectives'*

Similarly, the weight intended be given to Visual Performance Objectives such as 'Landscape scenic integrity', 'Key features disruption' and 'Multiple wind turbine effects' (VIA Bulletin, pp 13-14) should be clarified with reference to ESD principles.

The draft VIA Bulletin acknowledges that wind projects will be proposed where the best wind resources are. However, it then makes a broad statement that, while wind turbines can be 'seen as a key characteristic of the landscape, but not at a sufficient level to be a dominant characteristic of the area...' (p 13). This statement doesn't differentiate between more or less populated areas, or scenic areas, and it is not clear what has led to this general conclusion (for example, community surveys, qualitative interviews etc). We recommend these sections be reviewed and clarified. For example, the *Taralga* decision provides useful discussion on the 'first "breach"' of a landscape, and how visual impacts are assessed, weighed and responded to.<sup>33</sup>

In our view the final Policy should not adopt a position that windfarms are not allowed to alter, or in some cases be 'a dominant characteristic' of, *any* visual catchment in NSW; particularly when other forms of development – whether it be mining, intensive agriculture or power generation – can do so. At a time when systemic changes to energy production and distribution are underway, and are necessary to avoid dangerous climate change, the Government should promote and be informed by further community dialogue on a range of energy options and their impacts.

We make two other, minor comments on Visual Performance Objectives. First, the VIA Bulletin should clarify the parameters of the 30-hour per year limit for 'shadow flicker' to non-associated residences, after mitigation measures (p 14).<sup>34</sup> Second, the Policy should explain what 'indirect' visual impacts refers to (p 9).

#### *'Scenic quality class': is this limited to wind energy projects, or applicable to all SSD?*

We recommend that the Department clarifies the principles it uses to determine when scenic character should be prioritised and when it should not. These principles

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<sup>32</sup> *Taralga Landscape Guardians Inc v Minister for Planning and RES Southern Cross Pty Ltd* [2007] NSWLEC 59 (12 February 2007), paras 115-149 on visual assessment generally; and at 214 (noise).

<sup>33</sup> *Taralga Landscape Guardians Inc v Minister for Planning and RES Southern Cross Pty Ltd* [2007] NSWLEC 59 (12 February 2007), paras 124-147.

<sup>34</sup> For example:

- We note that this standard of 30 hours been adopted elsewhere, including the *Taralga* case.
- How should impacts be assessed (e.g. from home windows and doors)?
- Is this issue likely to be seasonal? (e.g. if shadow flicker were to occur over three months in winter, then the limit becomes 1 hour every 3 days).

need to be clearer and more consistent so as not to disadvantage wind projects. Some jurisdictions such as Victoria and Scotland (see above) are integrating 'landscape assessment' at the strategic planning stage.<sup>35</sup> However, the NSW Government recently indicated such matters are best identified at the project level.<sup>36</sup>

Step 5 of the Visual Baseline Study refers to identifying 'Scenic quality class'. This is based on a method from Victorian forestry research (VIA Bulletin, p 19). Will this approach be required for wind energy projects but not other major projects, such as forestry or mining? If so, the Policy should explain how this differentiation is risk-based.

While wind turbines may change the visual landscape in a characteristic way, this is not necessarily a *more harmful* impact than visual changes from other land uses (setting aside other impacts) – whether this be electricity transmission towers, forestry, mining, a power station, an aerodrome or a stadium with floodlights.

If the NSW planning system is to appropriately integrate consideration of impacts on the visual landscape, all major projects should be required to identify 'scenic quality classes' early in the planning phase, not just wind projects. This could be assisted by strategic planning principles that balance competing and complementary land-uses.

#### *Ancillary facilities*

The VIA Bulletin should clarify the proposed treatment of 'ancillary facilities', relative to wind turbines. For example, ancillary facilities are referred to in Table 1: Baseline study factors under 'visibility distance zone' (p 10); and under 'Visual Performance Evaluation' (p 12). A primary justification for additional preliminary assessment of wind energy projects is turbine height. However this justification is less likely to apply to ancillary facilities. We are not saying such facilities have no impact, only that their preliminary treatment should be clarified based on a risk-based approach (compared with other SSD).

### **Assessment by planning authorities – determination and conditions**

#### *Decision-making weight of visual impacts*

We welcome the brief summary of how the Department will assess visual impacts (VIA Bulletin p 15). We recommend making this summary more prominent upfront, to contextualise visual impacts amongst other environmental, social and economic impacts. We also recommend including this guidance (departmental assessment of visual impacts, p 15) in the final Policy, with additional emphasis and guidance on windfarms and co-existing land uses.

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<sup>35</sup> See *Scottish Planning Policy* (2014) <https://beta.gov.scot/publications/scottish-planning-policy/pages/6/>. See also: <http://www.dtpli.vic.gov.au/planning/plans-and-policies/rural-and-regional-planning/landscapestudies>.

<sup>36</sup> For example: 'Councils on the Far North Coast will not be permitted to apply mapped planning controls for scenic protection in LEPs.' NSW Department of Planning and Environment, Northern Councils E Zone Review – Final Recommendations Report (2015), p 10.

We also welcome the references to ESD as a ‘public interest’ consideration at the decision-making stage, and to the *Taralga* decision (VIA Bulletin, pp 15-16).<sup>37</sup> As noted above, the final Policy should expand on these important touchpoints, as they provide broader context to the decision, and the weight that should be given to different factors – including the consideration of present and future generations.<sup>38</sup>

#### 4. Noise Assessment Bulletin (Noise Bulletin)

We welcome the intention to ‘promote a planning and assessment framework which is consistent with the standards that apply nationwide’ (Noise Bulletin p 1). Rigorous, consistent assessment can reduce complexity for the community, developers and regulators. At the same time, we recognise that ‘consistent’ approaches should be sufficiently tailored to the type, source and intensity of noise, and therefore support specific guidance on wind energy noise.<sup>39</sup>

A risk-based framework would ensure activities with the same risk or impacts receive equal scrutiny. Our comments below assess the Noise Bulletin on achieving consistency. First we briefly consider consistency between proposed noise assessment for windfarms and more carbon-intensive energy sources that make up the vast majority of NSW’s current electricity supplies.

*Modifications, continuous improvement, and rigorous assessment of SSD generally*

We support applying the Policy to *modifications* of existing wind farms as proposed (Noise Bulletin p 1). Similarly, we strongly recommend that contemporary noise and other pollution standards should apply to *other* SSD project modifications, such as mine extensions. This would promote *continuous improvement* in environmental standards for existing development.

Some other examples where proposed assessment steps in the draft Policy should be matched for other major project assessment include:

- pre-lodgement indicative noise assessment (Noise Bulletin p 3);
- ensuring noise level objectives for mining projects are consistent with the wind energy objective that noise levels ‘do not significantly affect the living experience’ of local residents (Noise Bulletin p 5 – discussed below);
- minimum data points requirements for noise monitoring (Noise Bulletin p 8).

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<sup>37</sup> Under s. 79C of the *Environmental Planning and Assessment Act 1979* (NSW) (**Planning Act**). *Taralga Landscape Guardians Inc v Minister for Planning and RES Southern Cross Pty Ltd* [2007] NSWLEC 59 (12 February 2007).

<sup>38</sup> See for example, *Taralga Landscape Guardians Inc v Minister for Planning and RES Southern Cross Pty Ltd*, at 73-81, 138.

<sup>39</sup> The Noise Bulletin (p 2) notes that windfarm noise is unique in 3 ways:

- it is intermittent and can be ‘masked’ by increased background noise on windy days;
- height of turbines can limit opportunities for shielding; and
- turbine noise is ‘generally perceived as being different to other noise sources’ in rural areas (e.g. road noise and farm machinery).

*Clarify study references and low likelihood of special noise characteristics*

Where the Noise Bulletin refers to preliminary studies on annoyance levels ('Background' p 2), these studies should be cited in footnotes or end references.

The Noise Bulletin later notes that special noise characteristics, like tonal and low frequency noise, 'typically do not occur in well designed and well maintained wind turbines' (pp 5-6). We suggest adding this clarification when discussing annoyance levels above (p 2). We suggest this to encourage realistic, risk-based and informed consideration. We also suggest that upfront and scientifically robust information be provided on modulation and infra-sound to assist with increasing community knowledge of these issues.

Under 'Scoping and pre-lodgement assessment' (Noise Bulletin p 3), the preliminary assessment is to be based on 'conservative assumptions' and 'worst case noise propagation conditions'. We recommend this wording be reconciled with the tailored noise monitoring on p 8 (which modifies the SA 2009 approach because 'worst case wind direction rarely occurs' in some NSW locations).