



THE LAW SOCIETY
OF NEW SOUTH WALES

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16 September 2016

Ms Felicity Greenway
Director
Industry and Infrastructure Policy
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Ms Greenway,

New Wind Energy Planning Framework

The Law Society of NSW appreciates the opportunity to comment on the new wind energy planning framework.

The Department of Planning and Environment's draft Wind Energy Assessment Policy is a welcome policy initiative. Proponents of large energy generating projects intending to navigate their way through the planning system can benefit significantly from upfront clear policy guidance. Clearly articulated policies about what is acceptable and appropriate development allows potentially affected communities to understand what may or may not eventuate from proposals and can provide a basis upon which communities can effectively and constructively engage.

We understand that the intent of the Assessment Policy is to provide more clarity, consistency and transparency for industry and the community in relation to assessment and decision making on wind energy proposals. These are all elements of a best practice system.

The framework comprises:

- An overarching Assessment Policy
- A technical Noise Assessment Bulletin
- A technical Visual Impact Assessment Bulletin; and
- Standard Secretary's Environmental Assessment Requirements ("SEARs")

The four separate documents that comprise the policy framework form a modular approach that will provide flexibility to enable aspects of the policy framework to be updated as more wind energy generating developments are carried out across NSW. This appears to be a sensible and reasonable approach to the development of a policy framework that contains technical and specific detail about large scale development.

The Bulletins and SEARs acknowledge that large scale wind energy development has specific impacts unique to wind energy that need to be addressed. Some of these impacts arise from the unique settings of wind farms, that are likely to be single projects, located in a rural setting, across multiple properties owned and occupied by multiple parties, with unique visual and noise impacts.

The Assessment Policy seeks to resolve uncertainties relating to wind energy project assessment that have existed since the draft Planning Guidelines of 2011. The 2011 Guidelines proposed restrictions on wind energy developments that were more stringent than for other energy developments (including open cut coal mines), and often involved lengthy delays.

The emphasis on the need to engage local communities early is a positive factor and the Assessment Policy places significant weight on ongoing consultation throughout the assessment process.

One of the most significant policy shifts in the new framework is to move away from the 2 kilometre buffer zone, which was proposed in the 2011 draft Guidelines, towards the use of negotiated agreements as a means of engaging with landowners affected by specific impacts. Where negotiated agreements are not reached, proposals will be subject to impact assessment.

It appears that investment in wind energy projects to date in NSW has been less than for some other States. The NSW Government has made a commitment to contribute towards the national Renewable Energy Target of 20 per cent by 2020. With this deadline fast approaching, clear policy guidance is timely and will provide more certainty for the communities, planning decision-makers and the private sector to make more informed decisions about energy projects. It is noted that aside from the environmental benefits, there are likely to be economic benefits that will flow from large wind energy projects.

There may be some benefit to decision makers to provide guidance as to the weighting of factors in the assessment of a wind energy generating development. There is a large focus on visual and noise impacts, yet there is not much detail on how the principles of ecologically sustainable development are relevant to such projects. This is despite the existing guidance that can be found in the Court's decision in *Taralga Landscape Guardians v Minister for Planning and RES Southern Cross Pty Ltd* [2007] NSWLEC 59.

The policy would benefit from some clarification of the planning principles that apply to determine when scenic character should be prioritised and when it should not. In addition, it is not clear what 'indirect' visual impacts are, and their significance, although such impacts are referred to in the Visual Impact Bulletin.

Finally, we understand that it is the Government's policy that a wind energy project owner or operator, and not the 'host' landholder, should be responsible for decommissioning and rehabilitation at the end of the 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 Environmental Impact Statement, and include a commitment that the operator will be responsible for decommissioning and rehabilitation. However, it is not clear how this will be achieved other than through a negotiated landholder agreement. The policy framework would benefit from clarification as to how this will be achieved to provide certainty for stakeholders.

If you have any questions in relation to this submission, please contact Liza Booth, Principal Policy Lawyer, by email at liza.booth@lawsociety.com.au or on (02) 9926 0202.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Gary Ulman', with a horizontal flourish extending to the right.

Gary Ulman
President