

29 January 2024

Department of Planning, Housing and Infrastructure
4 Parramatta Square, 12 Darcy Street
Parramatta NSW 2150



Environment Institute
of Australia and
New Zealand Inc.

To whom it may concern,

Re: Draft NSW Renewable Energy Guidelines

1.0 Introduction

The Environment Institute of Australia and New Zealand (EIANZ) is the peak industry body for environmental practitioners in Australia and New Zealand. We represent over 2,000 members across both countries, with more than 510 located within NSW. As one of only two organisations accredited by the Department of Housing, Planning and Industry (DPHI) to administer and award certification for the Registered Environmental Assessment Practitioner scheme, our members have a distinct interest in planning policy and its implementation.

This submission relates to the Draft NSW Renewable Energy Guidelines (the Guidelines).

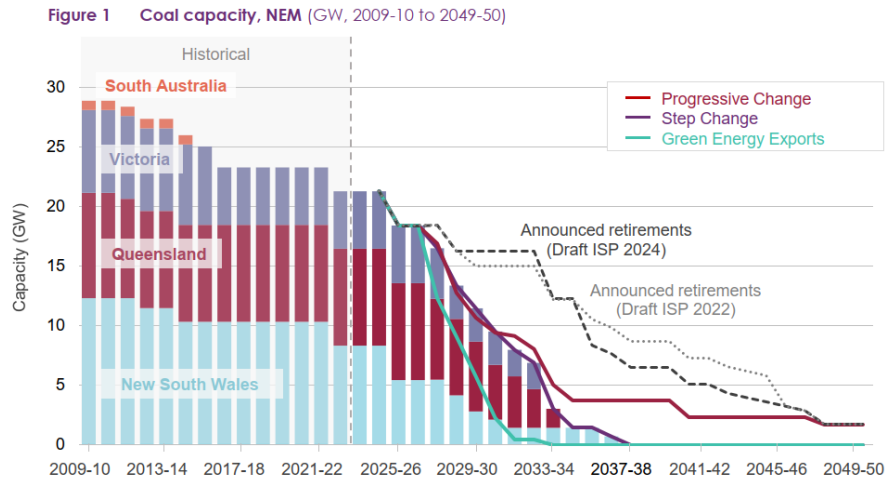
In preparing this submission the NSW Division of EIANZ has consulted internally and with selected members with a professional interest in renewable energy assessment and approvals.

2.0 Renewable energy in the NSW planning system

Climate change is the critical issue of our age. The likely and potential impacts associated with climate change, as predicted, are near catastrophic for our planet and human society. The imperative to act positively has never been so clear as now. The urgency of this issue is noted across political divides and is now legislated both in NSW and federally.

On the east coast of Australia this is compounded by the planned and expected closures of the entire coal fired fleet of power generation within the national electricity market (NEM) by 2038. This is the opinion of the Australian Electricity Market Operator in its latest integrated system plan (Figure 1).

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Given the combined urgency of these issues it is encouraging that DPHI is seeking to specifically address the planning and assessment of renewable energy within NSW. We are disappointed that whilst the Guidelines address these issues in early sections, they do not recognise this urgency in their substantive detail. In general, the Guidelines add requirements for renewable energy proponents, without a clear justification that these additions will make the planning system work better for proponents or for the community.

In NSW two wind farms have been approved in six years. There are at least 29 wind farms currently in the planning system, with 10 of those issued Secretary's environmental assessment requirements (SEARs) more than 2 years ago. The requirements of the NSW planning system for wind farms have grown steadily in recent years, such that the cumulative effect is delay of approvals and hence energy transition. Secondary regulation, not directly covered by the guidelines, such as detailed requirements of the EPA and BCD (for example for survey) are significant in adding to the complexity and delay of approvals. This is a particular issue when such requirements are not included in the SEARs and are requested to be applied during the assessment process.

Absent from the Guidelines is any recognition of the benefits of renewable energy development in addressing climate change. Instead, renewable energy projects are required to undertake levels of assessment more onerous than most jurisdictions elsewhere in Australia and internationally. Renewable energy assessment expectations and approval conditions are not consistent with long-standing approaches that are accepted in other industries to manage similar levels/nature of impact, despite having equivalent or greater impacts in terms of physical disturbance or number of people affected. The draft guideline in its current form does not assist DPHI during the assessment to challenge the unreasonable and complex assessment requirements asked for by Agencies that go beyond the requirements of SEARs.

In general, we consider the Draft Guidelines a missed opportunity for DPHI to demonstrate real leadership by streamlining the planning system for renewable energy projects, and by doing so, addressing the short-term threat of energy security, and the

long-term existential threat of climate change. The over-prescriptive nature of the Draft Guidelines potentially threatens NSW's (now legislated) goals for 70% emissions reduction 2035 and net zero emissions by 2050.

3.0 Specific commentary

We have arranged our commentary according to the specific parts of the Draft Guidelines in which they appear.

4.0 Draft Renewable Energy Guideline

- The Draft Guidelines provide for six months transition from the date of publication of the final Guidelines, after which all projects would be required to implement its requirements. This fails to recognise the extremely long programs associated with renewable energy developments, often greater than two years. This is driven by the detailed assessment methodologies of other NSW government agencies. Given that the industry has no certainty about when the Guidelines will be finalised, this introduces a great degree of uncertainty and significantly adds to development costs. It is our opinion that if the Guidelines are not referenced within the project SEARs then they should not be formally applied to the project.
- Interaction between guidelines and SEARs - It is important that the SEARs remain the key document that confirms adequate assessment. Consistency with guidelines should always be qualified as to 'where relevant'. This is because guidelines must cover a broad range of possible projects, locations and impacts and may not always be relevant to the project under consideration.
- Section 2.3 of the guide states that 'All DAs for wind energy projects will be subject to a rigorous, merit-based assessment that includes extensive community consultation and a detailed consideration of any environmental, social and economic impacts'. This is an unnecessary statement as this principle applies to all development rather than specifically for wind energy projects. Similarly, 2.3.1 states that the scoping report must be prepared a high standard. Again, this is unnecessary as the expectation that all scoping reports not just wind projects should be prepared to a high standard.
- Survey requirements for birds and bats is a key driver of assessment program and cost for NSW projects and is over specified for the potential environmental harm that wind energy projects cause. The Draft Guidelines themselves state that "*estimated mortality rates [from wind energy] are considerably less than estimates for other anthropogenic sources*". This is backed by several academic investigations, one of which stating that for every bird killed by a wind turbine in the US, nuclear and fossil fuel powered plants killed 2,118 birds¹. This level of highly prescriptive regulation fails to account for the positives of renewable energy development, including maintaining a habitable environment for all birds globally for the coming centuries.
- Blade throw – despite being included in the 2016 guidelines this issue is a clear example of over assessment. The real risk to life or property from such an event is

¹ <https://ideas.repec.org/a/eee/enepol/v37y2009i6p2241-2248.html>

extremely low. This a clear candidate for removal in any effort to streamline assessment requirements.

- Decommissioning and waste – these issues are relevant to any development, though they appear to be given far more attention in the guidelines than would be justified by a development type at the lower end of project footprints, particularly relative to resource or transport projects.

4.1 Draft Wind Technical Supplement – visual impact assessment

- The Draft Wind Technical Supplement – visual impact assessment (the visual supplement) includes some encouraging language in that DPHI "*recognise that changes to our landscapes will be necessary to facilitate the transition to renewable energy, and balance the need for this change with the need to protect unique and high-quality landscapes*". The visual supplement also states that "*the fundamental principle that landowners do not have a proprietary right or ownership of a view and a visible wind turbine or ancillary infrastructure does not necessarily constitute a visual impact.*" These sentiments are inconsistent with the extent of additional assessment requirements for proponents by this particular element of the Draft Guidelines.
- A rigidly applied 2 kilometre setback is both unworkable and unnecessary for wind energy development. We note that such a setback was previously implemented in Victoria, and was eventually wound back. Whilst we recognise the need to balance community concerns over visual impact, this impact (and its subjective interpretation) should not drive decision making regarding the potential energy future of NSW.
- The threat of speculative DAs to create a visual impact is real and substantial, which is recognised within the guidelines, but not fully resolved and could result in design sacrifices.
- The specific guidance on applying the grid-based approach to visual magnitude is unsuitable and unintuitive. This approach fails to distil the subjectiveness of visual impacts, and simply pushes them further into the process for the same disagreements to surface later on. It is notable that no other jurisdiction worldwide has taken an approach that is anything like this, despite places like the UK having a longer history of renewable energy development.
- The grid-based approach, and the other highly prescriptive methods outlined in the visual supplement appear to be designed more for ease of decision making rather than for the objective benefit of the community or proponents. The methods standardise an assessment approach, but do not address the fundamental issues behind impact assessment, be they philosophical, financial or political. The standard SEARs for all projects direct the proponent to 'apply the guideline' and nothing else related to the proposal. This results in projects being assessed on whether or not they are consistent with guidelines rather than assessment of a particular development on its merits at a particular location. This may result in perverse outcomes particularly where the guidelines have been developed for a specific purpose unrelated to the objectives of the proposal or policy goal.

- Performance objectives are too strict – the visual supplement requires that all impacts determined to be 'high' effectively be eliminated by removal or re-siting of turbines. It is very easy within the draft methodology for a 'high' impact to be triggered (generally due to the arbitrary and unexplained magnitude threshold values). A fundamental tenet of the state significant planning system is that projects may still be presented with significant impacts – visual or otherwise. The consent authority then makes the decision on their acceptability for the state of NSW, taking into account the associated social and economic benefits of that development. Rigidly specifying that all 'high' impacts are unacceptable removes any ability for assessing officers or the organisation generally to apply judgement outside that considered acceptable in the guideline.

4.2 Draft Wind Technical Supplement – noise impact assessment

- This guideline is generally in accordance with industry practice, though we recognise that noise specialists have demonstrated issues with some of the technical detail of the proposed methodology.
- Figure 1 of this document clearly demonstrates how conservative noise limits are in NSW, being significantly more stringent than most international and Australian jurisdictions. This further demonstrates our point above about the degree of over-regulation applied to renewable energy in NSW.

4.3 Draft Transmission Guideline

- The route selection process outlined in this guidance is highly confusing. The methodology uses several similar terms: preliminary study corridor, preliminary study area, preferred study corridor. The methodology would benefit from improved clarity on terminology and a flowchart diagram to better illustrate the process and its requirements.
- Our previous comment stands here, that six months transition is far too short for projects with assessment timeframes that can last years in some cases.
- The options consideration (Chapter 3) should acknowledge the role of RIT-T in helping define the preferred strategic technical option before the corridor options are further refined.
- Chapter 3 states that the preferred study corridor should be presented in the scoping report to be used in the EIS and informed by biodiversity/heritage studies, Aboriginal community consultation and meetings with individual landowners. Given the length and complexity of transmission infrastructure, the preferred study corridor is inevitably likely to be refined further and change after the scoping report once the studies for the EIS commence and further information on the constraints and opportunities are obtained. While technical studies and consultation should occur as early as possible, meetings with individual landowners and detailed biodiversity/heritage information may also not be possible to obtain for the scoping report given the high-level nature of the project definition and planning at that stage and necessary timeframes for transmission infrastructure approvals.
- The guideline states that a single 80 m tower will generally be dominant within 400 m of a rural dwelling and be a prominent feature in a rural landscape up to

1.5 km away. This is a very definitive statement and may be taken out of context. For example, views may be shielded by topography or other features such as existing vegetation, may be lesser in significance compared to other existing infrastructure within the view, and may not be visible from the primary view of a dwelling.

- Chapter 7 states that proponents should identify residences proposed to be subject to any acquisition agreements in the EIS. Given the nature of large-scale transmission infrastructure and the need to continue to avoid/minimise impacts through infrastructure siting in detailed design/construction planning, it may not be feasible or appropriate to provide a definitive list of acquisition agreements at this stage, given the final easement may not yet be confirmed.

4.3 Draft Transmission Guideline – Visual Technical Supplement

- It is noted that the methodology proposed here is similar to that for wind generation, though the magnitude thresholds are much higher. This is justified by transmission towers being more 'see through', not moving and being shorter overall. None of these however prevent the 'annoyance' factor within the landscape for people who object to the 'industrialisation of the landscape'. As such, lower thresholds do not seem justified and in fact may only lead to further confusion amongst the community. This is borne out within the example photomontages, where those for transmission lines seem to achieve much lower overall impact ratings despite appearing to the casual observer to be more visually prominent than examples in the wind visual guideline.

This inconsistency in approach is further highlighted when considering that generation and transmission of electricity are complementary parts of our energy system. Differences in assessment guidance of one over the other is not sensible.

Draft Benefit sharing guideline

- This guideline states as an objective to '**support rapid roll-out of solar and wind energy generation in NSW, including in REZs, whilst ensuring that host communities experience tangible, long-term benefits...**' This particular objective is far more high level than the others present in Section 1.1. This should be supported by further high-level objectives, such as managing the community's or the council's expectations, or providing a consistent framework for benefit sharing that reduces the potential for projects to be required to provide benefits to local communities in a manner not required of other types of development.
- For example, this guideline only applies to SSD, and not SSI.
- This guideline states that '*Private agreements are not a form of benefit sharing*' and that '*benefit sharing is not intended as a means of managing or mitigating impacts on individual properties or landholders*', and that '*Measures required to manage or mitigate the project's impacts to obtain approval are not considered to be benefit sharing initiatives*'. These statements do not represent a clear line given one of the suggested options for benefit sharing in section 3.2 includes '*offering neighbours subsidies or investment/co-ownership opportunities*'.

- The overall effect of this guideline appears to be one of moving proponents towards identifying and generating benefits to a community rather than just dealing with the environmental impacts in a traditional manner. Again, the requirement for community benefit is rarely, if ever, seen in assessment requirements for other industries or jurisdictions outside of renewable energy.
- The list of required inclusions for an EIS with respect to benefit sharing is long and detailed. This is in the context of community discontent at the sheer length of planning documents, and also risks the watering down of more traditional, and more important, key environmental impact assessments.

Draft Private agreement guideline

- This guideline appears to be weighted heavily towards providing the community views with greater weight, without evidence that the proponents for renewable energy development have or are likely to take advantage of communities.
- The requirements of this guidelines could be perceived as legitimising the idea of making payments to landowners and project opponents in order for projects to be supported.
- *'Applicants must submit copies of all impact agreements to the department and maintain the currency of these agreements over the life of the project'* This requirement conflicts with advice from DPHI during consultation events that the Department only wish to see the broad outline of what was being agreed to for the purposes of compliance only.
- The draft guideline does not seem to allow for in-kind works. It seems focused on monetary compensation and direct mitigation works only, which may not always be the most appropriate use of resources.

5.0 Conclusion

In summary, the Draft Guidelines appear to promote a far greater degree of prescriptiveness and detail throughout the entire assessment process. This contrasts with the assessment of other industries in NSW and other jurisdictions in Australia and elsewhere. This is a challenge to environmental professionals who work with proponents to provide adequate and comprehensive assessments, and to assessing officers to review that information to arrive at sensible and justifiable assessment outcome consistent with broader policy goals.

We suggest that subjecting renewable energy projects in NSW to assessment detail unseen for other industries or in other jurisdictions is the opposite of what is currently needed in this era of climate emergency and dwindling fossil-based electricity generation. We encourage DPHI to reconsider the Draft Guidelines and to redraft them in such a way that clearly advocates for progress in combating climate change, whilst acknowledging and helping to manage the impacts on the environment and the concerns of the community across the state.

Yours sincerely,

NSW Division of Environment Institute of Australia and New Zealand