NSW WIND ENERGY PLANNING FRAMEWORK

Presentation to ACCEL conference - 2017 Environmental Law Year in Review

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RENEWABLE ENERGY POLICY ...
WHAT WE WILL COVER TODAY

- NSW Renewable Energy Action Plan
- Approval requirements for major wind farms
- Before the current policy framework
- The new Wind Energy Framework
  » how it operates
  » key points
  » reactions
NSW RENEWABLE ENERGY ACTION PLAN

- Released - September 2013

- 3 goals -
  - attract renewable energy investment
  - build community support
  - attract and grow renewable energy expertise

- Each goal supported by proposed actions (24 actions in all)

- NSW Renewable Energy Advocate

- 2015 Annual Report - some progress
APPROVALS FOR MAJOR WIND FARMS (1)

- Wind energy developments come in all shapes and sizes
- Focus today on "major wind farms"
  → State significant development (SSD)
- NSW planning law - wind farm is SSD if -
  » CIV of $30M or more
  » CIV of $10M or more and located in an "environmentally sensitive area of State significance"
(CIV = capital investment value)
- NSW Wind Energy Framework applies to SSD
APPROVALS FOR MAJOR WIND FARMS (2)

- Planning approval pathway for SSD
  - Part 4.1 *Environmental Planning and Assessment Act* 1979
  - Application to Department of Planning and Environment (DP&E)
  - DP&E Secretary issues EIS requirements (SEARS)
  - EIS prepared and publicly exhibited for min. 30 days
  - Post-exhibition reports by proponent and DP&E
  - Minister determines application - consent with mods / conditions

- Environment protection licence (EPL) for SSD
  - If development consent granted, EPL can't be refused and must be consistent with consent
Legal challenges

- If wind farm is SSD and has output of 30MW or more - objectors can appeal to L+E Court on merits
  (unless PAC holds hearing into development application)
- *Any person* can bring L+E Court proceedings challenging development consent or EPL on legal error

Legal risk highlights value of "social licence to operate"
BEFORE THE CURRENT FRAMEWORK (1)

- Draft Planning Guidelines for Wind Farms
  - Released - December 2011
- Key features
  - No turbines within 2km of existing residences unless -
    - all owners of relevant within 2km buffer zone give written consent, or
    - proponent obtains site compatibility certificate for the area before the proponent lodges a development application
    (Similar to Victorian buffer requirement at that time)
  - Noise standards "most stringent in Australia and amongst the most stringent in the world"
  - EIS public exhibition period of 60 days (i.e. double the min. period)
  - "precautionary approach" to visual amenity and health impacts
BEFORE THE CURRENT FRAMEWORK (2)

- Reaction to draft 2011 Guidelines
  - strong opposition from renewable energy industry
  - development applications dried up
- Draft Guidelines didn't progress beyond initial release
- Over the next few years up to 2016, average duration for obtaining planning approval was 1,000 days
WIND ENERGY PLANNING FRAMEWORK

- Draft - August 2016
- Final - December 2016
- Extensive consultation
- The Framework is -
  » Wind Energy Guideline - over-arching policy document
  » Wind Energy Assessment Bulletins - subject-specific detailed guidelines, issued (and re-issued) from time to time
    » Noise Assessment Bulletin
    » Visual Assessment Bulletin
    » more to come?
  » Standard SEARS - standard requirements for wind farm EISs
- These are policy documents - not binding, but influential
FRAMEWORK - KEY POLICY FEATURES (1)

- Focus on balancing industry / investment and community
- Clearer guidance on assessment of key issues
- Intended to reduce delays in assessment and determination
- "Risk-based approach", supported by "rigorous framework"
- Noise
  - 2km buffer zone scrapped - now merit based assessment
  - SA wind farm noise guidelines (2009) largely adopted
  - noise goal of 35dB(A) or background noise + 5dB(A) (whichever higher) → much the same as draft 2011 Guidelines
  - additional guidance on tonality, low frequency noise etc
  - landowner agreements might exclude noise requirements for the parties to the agreement - DP&E will take these into account
FRAMEWORK - KEY POLICY FEATURES (2)

- Visual
  - 2 phase assessment process -
    - preliminary environmental assessment
    - assessment and determination
  - preliminary screening tools of "visual magnitude" and "cumulative impact" → intended to drive better design and site selection, and earlier community consultation
  - visual baseline study → "visual influence zones" and "visual performance objectives"

- Micro-siting - approval of "environmental envelopes"

- Refurbishment and decommissioning
  - proponent responsible → this should be in the EIS and agreements
FRAMEWORK - KEY POLICY FEATURES (3)

- Health
  - DP&E to be "informed by" NHMRC and advice of NSW Health, National Wind Farm Commissioner and Independent Scientific Committee
  - "no direct evidence that exposure to wind farm noise affects physical or mental health" (NHMRC, 2015)

- Community consultation and landowner arrangements
  - "early, meaningful and innovative"
  - should provide opportunities to influence design and siting
  - address landowner issues pre-application "as far as practicable"
  - "benefit sharing" encouraged (e.g. VPAs for community funding)
  - community consultation committee at design and EIS stage
RESPONSE TO DATE

- Industry seems positive - vast improvement on 2011 draft
- Community and land owner groups not too negative
- Difficult to gauge success of guidelines, because so many variables for promotion of renewable energy developments
- Just in time for solar to take over?