

NSW WIND ENERGY PLANNING FRAMEWORK

**Presentation to ACCEL conference -
2017 Environmental Law Year in Review**

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RENEWABLE ENERGY POLICY ...

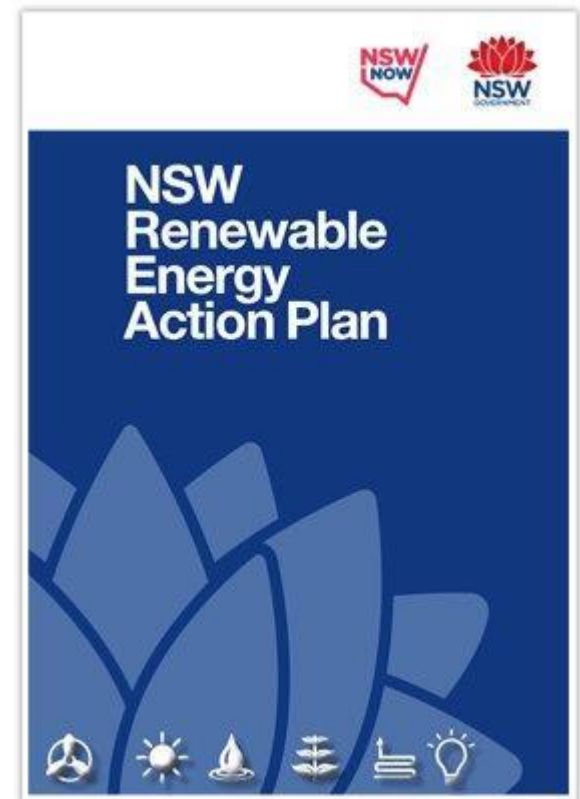


WHAT WE WILL COVER TODAY

- ▶ 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
 - » *Protection of the Environment Operations Act* 1997
 - » If development consent granted, EPL can't be refused and must be consistent with consent

APPROVALS FOR MAJOR WIND FARMS (3)

- ▶ 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)

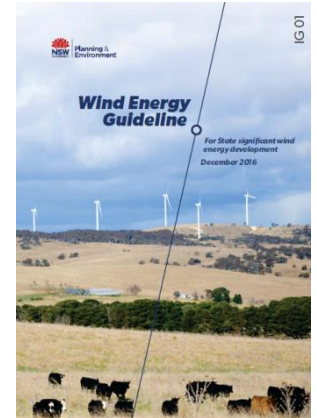
- ▶ Draft Planning Guidelines for Wind Farms
 - » Released - December 2011
- ▶ Key features
 - » No turbines within 2km of existing residences unless -
 - › all owners of relevant within 2km buffer zone give written consent, or
 - › proponent obtains site compatibility certificate for the area before 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 ?



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