



# Premier & Cabinet

Ms Lynn Lovelock  
Clerk of the Parliaments  
NSW Legislative Council  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Ms Lovelock

The Premier has asked me to forward to you the NSW Government response to the Legislative Council's General Purpose Standing Committee No 5 Inquiry into Rural Wind Farms.

Should you require further information regarding this submission, please contact

Yours sincerely

Brendan O'Reilly  
Director General

Received at 4.40pm  
Wednesday 16 June 2010

Clerk of the Parliaments

**NSW GOVERNMENT RESPONSE**

**LEGISLATIVE COUNCIL GENERAL PURPOSE STANDING  
COMMITTEE NO. 5, REPORT 31**

**RURAL WIND FARMS**

**JUNE 2010**

# NSW GOVERNMENT RESPONSE LEGISLATIVE COUNCIL GENERAL PURPOSE STANDING COMMITTEE NO. 5, REPORT 31: RURAL WIND FARMS

## Preface

The NSW Government supports the development of renewable energy sources as part of a range of measures to reduce carbon emissions. Through the State Plan, a target of 20% renewable energy consumption by 2020 has been adopted in line with the Federal Government's expanded Renewable Energy Target.

Based on current technology, wind farms are the most cost-effective source of renewable energy. Wind power is a clean energy source which helps reduce the State's dependence on non-renewable energy sources. It is also one of the renewable energy sources identified as increasingly significant to the nation's energy mix.

The NSW Government concurs with the Committee's conclusion that there are strong economic advantages for wind power in NSW and that the industry can make a positive contribution to employment and regional development. The NSW Government is implementing a range of measures to assist with wind farm development. In addition to the 20% renewable energy target, this includes implementing regulatory state-wide planning reforms and the establishment of six renewable energy precincts covering 46 local government areas in areas of NSW with the best-known wind resources: New England Tablelands, Upper Hunter, Central Tablelands, NSW/ACT Border Region, South Coast and Cooma-Monaro.

The NSW Government is seeking to provide consistent State-wide regulatory and policy settings so as to encourage investment in wind farms in NSW. This includes:

- lowering the threshold for renewable energy generation facilities defined as critical infrastructure from 250 Megawatts to 30 Megawatts, and waiving the fees associated with these projects until 30 June 2011;
- appointment of renewable energy coordinators for each precinct and a state-wide co-ordinator (located within the Department of Environment, Climate Change and Water) and appointment of a specialist renewable energy projects manager in the Department of Planning;
- reducing red-tape for small scale wind and solar developments (discussion papers released in April 2010); and
- preparing NSW Wind Farm Planning Guidelines, to be released in late 2010.

The concerns of some landowners and communities over wind farms is acknowledged. The NSW Government is establishing a Precinct Advisory Committee for each of the six wind renewable energy precincts. The purpose of the Precinct Advisory Committees is to:

- provide advice to Councils on regionally appropriate and consistent approaches to key wind development assessment issues that are not covered in the National Wind Farm Development Guidelines, being prepared by the Environment Protection and Heritage Ministerial Council;
- disseminate and promote the economic and environmental benefits of wind energy generation;
- help Councils within each Precinct to develop regionally appropriate and consistent approaches to developer contributions into community enhancement programs;
- identify and facilitate renewable energy opportunities within the Precinct; and
- identify and discuss issues of concern at the Precinct-level in relation to the uptake of renewable energy opportunities.

Each Precinct Advisory Committee will bring together representatives from Local Councils and the community to discuss and provide State and local government with regionally specific input on issues and actions that will support the development of renewable energy within the Precinct.

The NSW Government is also developing a range of information materials to help landowners and communities better understand wind farms. This will include the NSW Wind Farm Planning Guidelines, giving more information to the community and to industry on wind farm development issues, and a NSW Handbook on Community Wind Power to assist community cooperatives to establish wind farms, to be released by September 2010.

## Response to recommendations

***Recommendation 1:*** That the NSW Government develop and introduce alternative payment options for the construction of new transmission lines for the wind power industry in more remote locations in New South Wales, including supporting the Network Extension for Remote Generation Proposal put forward by the Australian Energy Market Commission.

### Response

The NSW Government supports the final recommendation of the Australian Energy Market Commission to amend the National Electricity Rules to allow for the construction and funding of scale efficient network extensions to support the connection of new generation, including renewable energy such as wind. This recommendation has now been endorsed by the Ministerial Council on Energy.

***Recommendation 2:*** That the Minister for Planning make detailed information available to the public as soon as possible regarding the matters that will be included in the NSW Planning and Assessment Guidelines for Wind Farms, including how the guidelines will fit in with the current planning framework relevant to wind farms.

### Response

The National Wind Farm Development Guidelines were released for public consultation in October 2009 and are expected to be finalised in the second half of 2010. The NSW Government will then consider integration of the national guidelines into the NSW Wind Farm Planning Guidelines in late 2010.

***Recommendation 3:*** That the Minister for Planning ensure that Local Government Development Control Plans for wind power generation, where they exist, are considered by wind farm developers. Developers should demonstrate their consideration of the relevant DCP in the development application submitted to the Department of Planning, through the inclusion of information that outlines how the relevant DCP has been complied with. If certain aspects of the DCP are not complied with the reasons for non-compliance should be set out. These requirements should be incorporated into the NSW Planning and Assessment Guidelines for Wind Farms.

### Response

Wind farms with a capital investment value of more than \$30 million are assessed under Part 3A of the *Environmental Planning and Assessment Act 1979*. Development Control Plans (DCPs) are considered in relation to Part 3A projects where they are relevant and reasonable in the context of the merit-based assessment, but are not binding.

The NSW Wind Farm Planning Guidelines will require proponents to consider local planning controls.

***Recommendation 4:*** That the Minister for Planning pursue appropriate policy or legislative changes to require that the erection of wind monitoring towers be subject to local government approval processes and that this process takes into account local aviation issues.

### **Response**

Local government approval for wind monitoring towers is required unless the monitoring towers are exempt development, which for wind monitoring towers requires towers to be:

- Removed within 30 months of installation;
- Less than 110m in height;
- Not located within 100m of any public road;
- Not located within 1 km of any other wind monitoring tower or a school;
- Not located within 1 km of any dwelling except with the prior written permission of the owner of the dwelling;
- Not located within 500m of any State heritage item; and
- Before the tower is erected, the Civil Aviation Safety Authority is notified of the tower's location, height and the date on which it is to be removed.

The purpose of including wind monitoring towers as exempt development is to streamline approvals to encourage investigation of wind resources in NSW.

In regard to local aviation issues, the exempt development provisions will be amended by the end of 2010 to strengthen notification and marking requirements.

***Recommendation 5:*** That the Minister for Climate Change and the Environment:

- *pursue appropriate policy or legislative changes to include wind power generation in the list of scheduled activities under Schedule 1, Part 1 the Protection of the Environment Operations Act 1997 to establish the Department of Environment, Climate Change and Water as the authority responsible for monitoring and addressing wind farm noise complaints, and*
- *require the Department to report annually to Parliament on wind farm noise complaints.*

### **Response**

Environmental impacts from wind farm developments are addressed at the planning, site selection and design stages rather than after they become operational, as the noise output of the wind farm is unlikely to change over time unless the wind turbine generator develops a fault and/or requires maintenance. If this occurs, the Department

of Planning or council administering the planning approval has the capacity to assess and enforce compliance with the planning approval requirements.

When development approval is granted for a wind farm, the approval authority - whether it is the Minister for Planning or the local council - typically imposes conditions that specify appropriate noise limits, noise impact auditing, noise monitoring and complaints handling mechanisms for the particular wind farm. The approval authority is also responsible for investigating complaints in relation to non-compliance with any condition of approval and for ensuring the noise complaints are responded to appropriately.

Under the *Environmental Planning and Assessment Act 1979*, the Minister for Planning is the approval authority for wind farm developments with a capital investment value of more than \$30 million (equivalent to a generating capacity of roughly 10 to 15 megawatts). The council is the approval authority for wind farm developments below this value.

***Recommendation 6:*** *That the Minister for Planning include in the NSW Planning and Assessment Guidelines for Wind Farms a clear process for handling complaints about wind farm noise, including identifying the authority that is responsible for managing complaints and how noise is to be measured for the purpose of making complaints.*

#### **Response**

The NSW Wind Farm Planning Guidelines will include a clear process for handling complaints about wind farm noise.

See response to Recommendation 5 for information in relation to the current process for handling complaints about wind farm noise.

***Recommendation 7:*** *That the Minister for Planning include a minimum setback distance of two kilometres between wind turbines and residences on neighbouring properties in the NSW Planning and Assessment Guidelines for Wind Farms. The guidelines should also identify that the minimum setback of two kilometres can be waived with the consent of the affected neighbouring property owner.*

#### **Response**

The NSW Government supports the current approach, which is for setbacks to be derived on a site specific basis through a merit assessment approach taking into account surrounding land use, topography and potential noise and visual impacts. This merits-based approach was recently endorsed by the Land and Environment Court in relation to the Gullen Range Wind Farm, and is also consistent with the approach proposed under the draft National Wind Farm Development Guidelines. Assessment of wind farms in relation to noise, visual impacts and land values will be clarified in the NSW Wind Farm Planning Guidelines.

Precinct Advisory Committees will also be able to provide comments and suggestions on how issues such as noise are addressed, and this can be used to inform setbacks.

***Recommendation 8:*** *That the Minister for Climate Change and the Environment make detailed information available to the public as soon as possible about how Renewable Energy Precincts will function and when they will commence operation.*

#### **Response**

Six renewable energy precincts have been established across NSW in areas with the best-known wind resources. These include: New England Tablelands, Upper Hunter, Central Tablelands, NSW/ACT Border Region, South Coast and Cooma-Monaro. Information about the Renewable Energy Precincts is available on the Department of Environment, Climate Change and Water website. This information will be regularly updated.

***Recommendation 9:*** *That the Minister for Planning address decommissioning of wind turbines in the NSW Planning and Assessment Guide for Wind Farms, including responsibility for decommissioning, the time period in which turbines should be dismantled and removed and how decommissioning will be funded. And that the Government consider requiring the developer to pay a bond.*

#### **Response**

The NSW Government supports the need for decommissioning of wind turbines to be better addressed, and will address decommissioning in the NSW Wind Farm Planning Guidelines.

Current practice in NSW is for decommissioning to be addressed through conditions of consent. This typically requires:

- the site to be returned, as far as practicable, to its condition prior to commencement of construction within one year of decommissioning;
- any wind turbine not used for the generation of electricity for a continuous period of twelve months to be decommissioned; and
- that prior to the commencement of construction, the proponent is to provide evidence to the satisfaction of the Director General that the lease agreements with the site landowners incorporate adequate provisions to require that decommissioning occurs. Based on advice from various NSW wind farm proponents and contrary to the Committee's report, it is usual for the proponent to be responsible for decommissioning not the landowner.

The need for a decommissioning bond is not considered necessary given the arrangements in place through conditions of consent, and the detail that will be provided in the NSW Wind Farm Planning Guidelines.

***Recommendation 10:*** That the Minister for Planning increase the public exhibition period for Environmental Assessments of wind farms from 30 days to 90 days and clarify the notification process for public exhibitions.

**Response**

A thirty day public exhibition period is in keeping with the Government's commitment to expedite the introduction of renewable energy technologies. Stakeholders who require additional time to lodge information may request an extension during the thirty day exhibition period. Supplementary information lodged within an agreed timeframe may be considered as part of the assessment process.

Clarification of the notification process for public exhibition will be considered in the preparation of the NSW Wind Farm Planning Guidelines.

***Recommendation 11:*** That the Minister for Planning commission research into compensation options for residents who are adversely impacted by wind turbines and wind farms in general. The research should investigate options including the purchasing of affected properties and/or the provision of monetary compensation by the developer.

**Response**

Under current practice, where an impact on a property is assessed to be direct, extreme and unable to be mitigated, a condition of approval may be imposed requiring the proponent to acquire the affected landowner's property, if this is agreed by the landowner, and the proponent decides to proceed with the turbines causing the impact.

The NSW Wind Farm Planning Guidelines will clarify issues on compensation for residents where it is considered there may be adverse impacts from wind farms. Community Enhancement Programs have been established by industry on a voluntary basis with local communities to address impacts from wind farms.

***Recommendation 12:*** That the NSW Government commission a study on encouraging local ownership of wind farms. The report should examine international examples and include recommendations on how local ownership can be better supported in NSW, including consideration of legislation, local ownership models and incentives.

**Response**

Encouraging community owned wind farms is consistent with the NSW Government's policy objectives to promote renewable energy development and engage local communities.

As noted by the Committee in its report, a NSW Handbook on Community Wind Power to encourage the development of locally-owned wind farms is in preparation and due to be released by September 2010. It will include information on available

technologies, ownership models and specific case studies, drawing from local and international experience, where possible.

***Recommendation 13:*** *That the Minister for Planning require wind farm developers, as part of the Environmental Assessment process, to provide information about the projected level of greenhouse gas emission reduction that would result from the proposal and the carbon costs of the production of the infrastructure used.*

#### **Response**

The NSW Government recognises that the contribution of wind farm developments to cutting greenhouse gases needs to be better understood and communicated. DECCW is developing a community information package as part of the Renewable Energy Precincts initiative that will, among other things, address greenhouse gas issues.

The NSW Government has also commissioned a study of greenhouse savings from wind farms in each of the 6 precincts. Detailed energy market modelling will be used to determine the greenhouse savings from 30MW, 150MW and 500MW wind farms in each of the precincts. A spreadsheet tool will be made publicly available to estimate greenhouse savings from wind farm projects using a consistent methodology.

***Recommendation 14:*** *That the Minister for Planning ensure that wind farm developers comply with bird and bat management conditions of consent. A summary of results of bird and bat monitoring, including the number of deaths, should be published annually on the Department of Planning website. Where the results demonstrate non-compliance with the conditions of consent the Minister should apply appropriate penalties or action.*

#### **Response**

Conditions of consent for wind farm operators generally include requirements to monitor and report on bird and bat deaths (including occurrences and species) and management actions taken to mitigate impacts. The NSW Government considers it important that all conditions of consent are complied with and that non-compliance is addressed by the appropriate authority.

***Recommendation 15:*** *That the Minister for Climate Change and the Environment commission an appropriate research project, in partnership with a relevant NSW tertiary institution, into the effects of wind farm operations on native fauna including a monitoring project involving academics and students.*

#### **Response**

The NSW Government minimises the impact of wind farms on native fauna by setting conditions on the design, construction and operation of wind farms that avoid or minimise the clearance of vegetation and disturbance of habitat.

There is benefit in further research to add to the existing body of knowledge on wind farms and native fauna and help proponents and regulatory bodies with appropriate site selection, design and operation of wind farms.

Any research project on wind farm operations and native fauna would need to be carefully designed, with oversight by an expert panel to advise on objectives and design and ensure it is tailored to meet the information needs of consent authorities and wind farm operators. The NSW Government would be willing to discuss options with relevant NSW tertiary institutions on this type of research.

***Recommendation 16:*** *That the Minister for Planning address landscape and cultural heritage values in the NSW Planning and Assessment Guidelines for Wind Farms.*

**Response**

The NSW Wind Farm Planning Guidelines will address landscape, ecological and cultural heritage values.

***Recommendation 17:*** *That the Minister for Planning ensures that the Environmental Assessment process for wind farm development applications requires comprehensive assessment of potential noise impacts. Both day and night time noise modelling and noise modelling in relation to temperature inversions and the van den Berg effect should be taken into account.*

**Response**

Currently, potential noise impacts from wind farms are assessed using the 2003 South Australia Environment Protection Authority's Wind Farm Environmental Noise Guidelines. Current practice is for wind farm proposals to consider the Van Den Berg effect in the assessment of potential noise impacts, although it may have limited applicability in situations where wind farms are proposed on ridgelines, in hilly or mountainous areas.

It is proposed to consider integrating or adopting the National Wind Farm Development Guidelines (once finalised) into the NSW Wind Farm Planning Guidelines later in 2010.

***Recommendation 18:*** *That the Minister for Planning require, as a condition of consent, that wind farm developers publish within the local community detailed information about all aspects of the wind farm and provide appropriate options for members of the community to discuss their concerns with the developer, such as establishing a phone line, email account or local office to hear and address local concerns.*

**Response**

Community consultation guidelines will be developed to encourage and assist proponents to improve community engagement. Consideration of the guidelines will

be included as a requirement in the Director General's Requirements and conditions of consent for any approved projects.

The NSW Government encourages proponents of new wind farms to adopt a proactive approach to community consultation during both the pre-exhibition phase and the post determination phase. In addition, six regionally-based Precinct Advisory Committees are being established. The Committees will provide the community with an additional communication channel, above and beyond existing statutory requirements.

***Recommendation 19:*** *That the Minister for Lands request that the NSW Valuer General commission a comprehensive research study into the impact of wind farms on property values in New South Wales to build on the work of the Preliminary assessment of the impact of wind farms surrounding land values in Australia, August 2009.*

### **Response**

The preliminary study is the most comprehensive in Australia to date, and its findings are consistent with the larger, more detailed studies undertaken overseas which have found no statistical relationship between wind farms and surrounding property values.

It should be noted that the scope of the study was limited by the availability of NSW data given the low number of wind farms in NSW to date. This situation has not substantially changed since the preliminary assessment was undertaken in 2009, and the NSW Government does not support more research in this area until more data is available.

***Recommendation 20:*** *That the Minister for Planning ensure that the Department of Planning and wind farm developers appropriately take into consideration the following reports in the planning of existing, approved and proposed wind farms:*

- *Commonwealth Aviation White Paper*
- *Commonwealth Inquiry into Safeguards for Airports and the Communities Around Them*
- *Australian Standard AS3891, Air Navigation Cables and their supporting structures, marking and safety requirements.*

### **Response**

Guidance on addressing aviation issues will be included in the NSW Wind Farm Planning Guidelines.

Current practice is for requirements relating to aviation issues to be included in Director General's Requirements and as conditions of consent imposed for any projects approved by the Minister for Planning under Part 3A of the *Environmental Planning and Assessment Act 1979*.

***Recommendation 21:*** *That the Minister for Planning develop guidelines for the establishment of community funds by wind farm developers, to ensure that community funds are established, donated to and managed in a consistent and equitable manner.*

**Response**

The NSW Government is preparing guidelines on voluntary community enhancement programs, including community funds established by wind farm developers. Input will be sought from the Precinct Advisory Committees as well as from industry before finalising these guidelines.