Vestas Australian Wind Technology Pty Ltd

14 March 2012

Policy, Planning Systems and Reform
NSW Department of Planning and Infrastructure
GPO Box 39
SYDNEY NSW 2001

By email: innovation@planning.nsw.gov.au

Dear Sir/Madam

DRAFT NSW PLANNING GUIDELINES: WIND FARMS

Thanks you for the opportunity to make a submission on the *Draft NSW Planning Guidelines: Wind Farms* (**the Draft Guidelines**).

Vestas Australian Wind Technology Pty Ltd is the local subsidiary of Vestas Wind Systems A/S, the world's largest manufacturer of wind turbines.

Vestas is the world's leading supplier of wind power solutions, having installed more than 41,000 wind turbines across the globe. Worldwide, Vestas employs more than 23,000 people in the design, manufacture, sales, installation, operation and maintenance of wind turbines.

While the home country of Vestas is Denmark, we have significant operations all across the world and we are experienced in comparing policies and regulations in all our markets.

In Australia we have been responsible for the supply of more than half of the wind energy capacity to date. However Vestas is not a developer or owner of wind farms or wind energy projects, and so does not seek planning permits.

Vestas is also a member of the Clean Energy Council (**CEC**), and in addition to our own submission we would also refer you to the CEC's submission regarding the Draft Guidelines.

Executive summary

Vestas opposes the Draft Guidelines, primarily because of the sheer number of new and additional requirements and barriers that would be placed in front of the wind energy industry without any clear evidence, justification or demonstrated need for this additional regulation.

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The Draft Guidelines appear to be in conflict with the New South Wales (**NSW**) Government's own renewable energy policies and seem to be primarily motivated by an attempt to appease anti-wind protest groups.

The Draft Guidelines impose new rules that are not faced by any other industry in NSW, and directly discriminate against wind energy.

Some concepts, such as the requirement to assess impacts on property values and the introduction of a 2km "gateway" are at odds with many years of existing case law in the planning portfolio.

Other concepts such as the new noise requirements are more stringent than any other jurisdiction in the world, without any justification as to why this is required.

Even though we suspect the Draft Guidelines have been drafted in response to the lobbying of anti-wind activist groups, we confidently predict that the Draft Guidelines will not be accepted by those groups.

Such groups are not interested in compromise or balanced outcomes. They care little for evidence-based policy or addressing genuine impacts that wind farms might cause in specific locations. They seek nothing less than the demise of the wind farm industry, wherever it may be located.

Unfortunately, higher electricity prices will be the legacy of this attempt by the NSW Government to appease a noisy minority of activists. In addition, job growth and investment attraction will also suffer.

This will occur because the additional requirements and barriers in the Draft Guidelines for wind farms will make them more expensive to build and operate, and will force them to be located in areas where wind speeds are lower or transmission access is harder to secure.

By contrast, South Australia provides a good example of how a state government has worked with the wind industry and local communities to attract investment and jobs, build record levels of wind farms and keep power prices low. NSW would do well to follow this example and ignore the small but noisy group of activists that are seeking to destroy the wind industry and keep NSW reliant on fossil fuels.

Background

Over the past decade in Australia, the wind energy industry has grown substantially in almost all states and territories, to the point where more than 2000 megawatts of installed wind capacity is now operating. A further 6000 megawatts of new wind energy projects are currently being investigated or are in the planning stages, many of them in NSW.

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Part of the reason for the industry's growth has been the Federal Government's 20% Renewable Energy Target (**RET**) scheme, which has driven most of the investments in wind energy in Australia since 2001. The decision in 2009 by the Australian parliament to lift that target to 20% by 2020 will continue that growth over the next decade.

The other key driver behind this growth has been the policy imperative for all nations around the world to cut greenhouse emissions in an effort to reduce the impact of climate change. Wind power is the most cost-effective form of renewable energy with zero greenhouse emissions, and is forecast to retain this status for many years to come.

Wind energy and its role in energy policy

Wind energy is just one source of energy available to NSW. Historically, NSW has relied heavily on coal to supply its electricity. While coal has provided low-cost electricity during the previous century, this does not mean that this is likely to continue in this century. Labor costs, extraction costs and pollution costs are all good reasons for NSW to consider moving away from such a heavy reliance upon coal and gas.

In addition, the further expansion of coal mining and gas extraction has been facing increased community concern, particularly from farmers. Coal mining is an activity which is not able to coexist with farming activities in most cases, as it usually entails open cut methods or involves such significant activity at the mine mouth that growing crops or managing livestock becomes problematic, and in many cases impossible in the same location as the mining activity or gas extraction.

In addition, access to water is also a major factor that makes it difficult for coal mining and gas extraction to coexist with farming. Unlike other users of water, power stations often obtain their water at sub-commercial rates and this has been under challenge in recent years.

The National Water Commission has examined these issues and said electricity generators "should face the full economic costs of their consumption decisions, so they have incentives to invest in more efficient technologies"[1]. Coal-fired power stations use large volumes of water for cooling purposes, so this is no small issue.

By contrast, wind energy does not face these issues. Barely any water is required for the operation of wind turbines. They cause no air or water pollution. There are no greenhouse gas emissions from wind turbines. And wind energy, unlike many other forms of electricity generation, does not have a fuel cost.

[1] "*Water and the Electricity Generation Industry: implications of use*" National Water Commission, 2009

While other states and countries do not have significant renewable energy resources, NSW does[2]. It would be prudent for the NSW Government to focus on diversifying into wind energy over the coming years, which appears to be the approach now being taken.

It has been pleasing to see that the NSW Premier and a number of his ministers have restated their support for the 20% RET and indicated their willingness to attract investment in renewable energy to help achieve the target, including a statement by Planning Minister Brad Hazzard on radio on 9 February this year.

An increase in wind energy generation in NSW is an excellent strategic move in light of water and greenhouse gas constraints, and such a move will also act as a natural hedge against any increase in the fuel costs of coal and gas-fired power stations.

Against that background, the proposed introduction of a new and discriminatory set of planning guidelines that makes it more difficult to build wind farms in NSW seems short-sighted and highly questionable given the strategic issues discussed above.

Rationale and principles behind the Draft Guidelines

The Executive Summary of the Draft Guidelines includes the following statement:

> *The NSW Planning Guidelines: Wind Farms have been designed to deliver improved consistency and rigour in the planning assessment process and ensure effective consultation with local communities.*

Presumably such goals would also be worthy of pursuing in relation to the planning assessment process for all kind of land use, not just for wind farms.

It is imperative that any proposed changes to the planning assessment process are fair, transparent and efficient.

Assessment of wind farms should be based on objective criteria that all stakeholders can understand.

This can be achieved by ensuring the Draft Guidelines do not place additional burdens on the development of wind farms by creating delays or uncertainties in the planning process.

As is discussed below, many of the provisions of the Draft Guidelines discriminate against wind farm development and should be amended to ensure this discrimination does not occur.

[2] "*Australian Energy Resource Assessment*" Department of Resources, Energy and Tourism, 2010

Specific responses to the Draft Guidelines

Section 1.2 Which development assessment process applies?

We note that the minimum 30 days exhibition time for state significant development (**SSD**) projects has been extended to a 60 day minimum in the case of wind farms that are deemed SSD.

While the duration of this period does not particularly trouble us, the discrimination against one form of development certainly does.

In practice, we would expect that wind farm project proponents would work with local communities, local councils and the Department of Planning and Infrastructure (**DP&I**) to agree on a longer exhibition time for highly complex projects where this is considered to be necessary.

However, we consider it is inappropriate and discriminatory to entrench a longer exhibition period for wind farms as a blanket rule, and we do not consider that the basis for this decision has been justified by DP&I.

Section 1.3 (a) Proximity of turbines to existing residential dwellings (2km)

Vestas welcomes the increased focus on community consultation and engagement in the Draft Guidelines. We also support the requirement to comprehensively document the views of nearby landowners, including any concerns they may have with proposed wind farms.

However, we do not support the requirement to explicitly seek the written consent of all landowners within a 2km range between proposed wind turbines and existing residential dwellings, or the requirement for a Site Compatibility Certificate in the event that written consent is not obtained.

Such a requirement does not apply to any other kind of development to our knowledge, and accordingly it is discriminatory against wind farms without any clear justification for this.

In fact, setting a specified zone for engagement may actually reduce the capacity for wind farm proponents to comprehensively consult with local communities and residents.

In relation to the 2km “gateway” zone, we would note that the 2011 Senate Inquiry into Rural Wind Farms concluded that “the application of scientific measurements for sound and for shadow flicker to alleviate problems for wind farm neighbours may be

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preferable to prescribed setbacks. Prescribed setbacks are arbitrary and may be too great or too small"[3].

That statement is consistent with existing case law. The 2010 decision of the NSW Land & Environment Court on the Gullen Range Wind Farm rejected the local council's proposal of an arbitrary setback distance of 2km, stating that "assessment of impacts on properties should be done on an individual basis taking into account topography, orientation of houses and distances to visible turbines"[4].

It has not been made clear by DP&I why NSW should now move away from established law as well as the findings of the Senate Committee. It has not been made clear why wind farms should be subject to this discriminatory form of assessment compared to every other kind of land use.

If it was thought by DP&I that a 2km zone would go some way towards appeasing the various anti-wind groups from the constant political campaigning against wind farms, it won't work. The stated goal of the anti-wind activist groups is to have a 10km buffer zone between residential dwellings and wind turbines[5]. They continue to claim that wind farms cause direct and adverse health impacts, even though the peer-reviewed evidence on this topic indicates the exact opposite.

In addition, there are practical concerns regarding the very early stage at which landowner consent is required. When developers are investigating sites, various technical aspects are simultaneously investigated including wind resource and planning constraints. This process can take months during which community consultation will be taking place. However, the developer is unlikely to know exactly where turbines will go and thus what consents are required.

The proposal to secure approval for turbines within 2km at the beginning of the project will prove unworkable. it is impossible for the Joint Regional Planning Panel (**JRPP**) to fairly review the impact of a project in the absence of a complete analysis of the project, which can only occur once all the detailed studies have been undertaken.

A wind farm project continues to evolve from the initial turbine layout in response to constraints identified in studies (environmental, technical, cultural, local amenity) as well as in response to consultation with the community. This would be impossible without access to the Director General's Requirements upon which these studies are based.

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[3] *The Social and Economic Impact of Rural Wind Farms*, report of the Senate Community Affairs References Committee, June 2011, p.20

[4] http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWLEC/2010/1102.html?stem=0&synonyms=0&query=%22property%20value%20

[5] For example, see the "Explicit Cautionary Notice", viewed at www.waubrafoundation.com.au on 22 February 2012

Section 1.3 (b) Community consultation

See comments below in response to Section 2.2.

Section 1.3 (c) Visual amenity

Vestas rejects the need for a requirement for a Site Compatibility Certificate for turbines within 2km of neighbouring homes, for the reasons set out above in the discussion of Section 1.3 (a).

Section 1.3 (d) Noise

See comments below in response to Appendix B.

Section 1.3 (e) Health

The proposed requirement to reference "up to date evidence-based research" gives little guidance as to how this would be judged by a JRPP or any other decision-maker in the planning process. What qualifies as "evidence-based research" is a frequently debated topic, so this clause provides no certainty to anyone involved in the planning process.

Certainly the anti-wind farm activist groups refuse to accept the peer-reviewed evidence on this topic and have continued to rely on the scaremongering of unregistered doctor Sarah Laurie and information they have harvested from various anti-wind websites.

Given that most wind farm planning stakeholders are not medical experts, we think it would be more appropriate if the Draft Guidelines were amended to require that project proponents consider the project's impact on health, with reference to the latest statements from the National Health and Medical Research Council (**NHMRC**) and NSW Department of Health.

Ideally, the entirety of Section 1.3 (e) should be deleted so as not to give the impression that the NSW Government places any credibility in the false claims of the anti-wind activist groups on the topic of health impacts.

Section 1.3 (f) Decommissioning

The Draft Guidelines state that "wind turbines typically have an expected operating life of around 20-25 years at which point they are usually decommissioned".

There are no wind farms of that age in Australia and so what "typically" happens to the turbines at this point is unknown. Thus the statement is a ridiculous one to include in a document of this nature, and it looks suspiciously like the kind of statement that is more likely to have been made by the anti-wind activist groups.

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Vestas does support the inclusion of a Decommissioning and Rehabilitation Plan in the environmental assessment report.

However, we do not support the requirement for proponents to provide a decommissioning bond. It is not clear how DP&I would calculate the level of this bond and until this is defined, we suggest that the requirement is removed from the Draft Guidelines.

Additionally, the requirement for the decommissioning plan to be updated every five years is an unnecessary burden not required of projects in other sectors. Wind farm operators have a clear incentive to maintain their assets for as long as possible because unlike most other power stations the "fuel" for a wind farm (i.e. the wind) is free. Hence this additional requirement is unnecessary.

Section 1.3 (g) Auditing and compliance

We note this section allows neighbours of wind farms to write to the Director General of DP&I to request independent noise monitoring at their house. This section gives no further detail on what grounds this request would be agreed to, such as:

- who would undertake the monitoring,
- who would pay for it; and
- what actions would result if the readings show compliance or non-compliance.

At a bare minimum, such matters should be clarified.

Section 1.4 Preparing an Environmental Effects Statement

No comment.

Section 2.1 Consultation requirements (documenting "effective engagement")

Vestas agrees that consultation should be "aimed at identifying and considering options for eliminating or reducing impacts". That seems in line with accepted practice and on the face of it is a good policy.

However, the requirement in 2.1(a) that "the proponent's assessment report will not be accepted until evidence of effective consultation has been presented and it has been demonstrated that the issues raised during consultations have been appropriately addressed" could cause major issues.

Without further definition of "appropriately addressed", this requirement could be used by project opponents to delay projects indefinitely. The Draft Guidelines need to clearly state the requirements to be satisfied by the project proponent.

On the specific issue of property values, this is discussed below under Section 3.2.

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Section 2.2 Who to consult

Vestas supports wide community consultation with respect to wind farm developments. However, as noted earlier in this submission, we consider the list of required stakeholders should be restricted to **only those who are impacted by the proposed project**.

This means that "organisations that represent those with a state, national or global interest, e.g. peak environment groups and national industry associations" and the "Aerial Agricultural Association of Australia" that currently appear on the list in 2.2 should not require consultation.

Many of them are nothing more than lobby groups, and in any other scenario would not have standing to interfere in a process like this as they are not local residents. In most cases the views of such organisations are well known and are not directly relevant to local planning issues.

The proponent should only have to consult with people, companies and agencies that are directly impacted by the wind farm in the local area.

Any diversion from this key principle leaves the process open to manipulation by organised protest groups who may not have members who live anywhere near a proposed major project.

Furthermore, given the Government's intention to restore planning powers to local communities, we would recommend that any objections to projects should only be deemed relevant if:

- the objections are from local agencies or members of the public living within a limited distance from the project, perhaps between 0 and 5 kilometres;
- the objections are not merely "form letters" or other verbatim forms of communication; and
- the nature of the objections are restricted to matters relating to the impact of any project on the local environment.

Such restrictions would be likely to focus the planning assessment process so that it addresses local environmental issues and other practical impacts rather than allow anti-development groups from outside the local area to add delay, extra costs and spurious matters and prevent SSD projects from proceeding and making economic contributions to local economies in NSW.

Section 2.3 Consultation approaches

No comment.

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Section 3.2 Identifying relevant assessment issues (also the subject of Appendix A)

The list of "issues that typically need to be assessed for a wind farm application" is a long one, and includes many issues that have been raised by anti-wind activist groups in addition to matters that are normally addressed in planning assessments.

Vestas wishes to make comment on a number of them.

Health

As set out in the discussion of Section 1.3 (e) above, Vestas rejects the claims of the anti-wind groups regarding adverse health impacts of wind turbines. We consider that this item should be removed from the Draft Guidelines to properly reflect the most recent peer-reviewed evidence and findings of the NHMRC and the NSW Department of Health on this topic, and to ensure the baseless claims of anti-wind activists are not given any credibility by such a specific reference.

Property values

Property values are not considered valid grounds in planning matters, yet for some reason have been included as a proposed matter for consideration in the Draft Guidelines. In the Taralga and Gullen Range Land and Environment Court decisions this issue was raised and subsequently dismissed as a relevant consideration in the planning framework[6].

The quote below makes it clear that the inclusion of such a matter would be contrary to the objectives of the relevant planning legislation:

> *160 Creating such a right to compensation (for creating such a right it would be) would not merely strike at the basis of the conventional framework of land use planning but would also be contrary to the relevant objective of the Act, in s 5(a)(ii), for "the promotion and co-ordination of the orderly and economic use and development of land".*

In any event, the 2009 independent study commissioned by the NSW Valuer General revealed that wind farms had no identifiable impact on the value of nearby properties[7].

That alone means that this particular section of the Draft Guidelines would be yet another example of regulation that is not evidence-based.

[6] See in particular paragraphs 107 to 109 and 159 to 160 at http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWLEC/2010/1102.html?stem=0&synonyms=0&query=property%20value%20

[7] *Preliminary Assessment of the Impact of Wind Farms on Surrounding Land Values in Australia*, Duponts, August 2009

Blade throw

The occurrence of an incident where a blade from a wind turbine becomes detached from the generator is a rare one, yet perhaps because of its novelty factor has become a common topic raised by anti-wind groups to scare local communities as part of a campaign to stop wind farms being built.

Inclusion of any references to "blade throw" in the Draft Guidelines may please the anti-wind groups but would be in contrast to most other aspects of planning and environmental assessment, which are evidence-based.

DP&I has not provided any evidence to justify such a rare occurrence becoming a necessary issue for consideration in planning assessments. In addition, there are already laws in existence for owners and operators of wind farms to maintain a safe workplace and fulfil their duty of care towards others in the community.

The proposal for planning applications to address such a rare eventuality really widens the scope of matters that proponents need to cover in their applications, and sets a dangerous precedent for all types of planning assessment.

For example, in recent times we have seen reports of anti-wind activists who claim that wind farms could interfere with the migratory patterns of whales[8]. Again, no evidence is provided for such a claim.

At best, the inclusion of "blade throw" as a relevant consideration in the planning assessment framework is another example where the Draft Guidelines discriminate by placing additional regulatory requirements on wind farms when compared with other forms of development and land use.

At worst, the inclusion of this topic as a relevant consideration sets a precedent that would see all kinds of additional spurious topics included in the planning assessment framework for other kinds of development.

Like health and property values, it should be removed from the list of relevant assessment issues.

Section 3.3 Conditions of consent and compliance

No comment.

Section 3.4 Community infrastructure contributions

Vestas supports private arrangements between project proponents and individuals and/or community organisations to deliver community benefits outside of the statutory planning process or assessment framework.

[8] Eden Magnet newspaper, 9 February 2012

Section 3.4 of the Draft Guidelines suggests that "The consent may require the applicant to provide a contribution, including monetary, land or in-kind contributions, towards community infrastructure". However they also state that "private arrangements with individuals and or community organisations… are outside of the statutory planning process and are therefore not relevant to the assessment".

The Draft Guidelines should clearly state whether voluntary payments (whether to a local council or to an individual or community group) are relevant or irrelevant to the planning permit. It should not distinguish between these two types of voluntary payments.

Appendix A: Meeting assessment requirements

Many of the issues we have with this section have been discussed above, namely the references to health, property values and blade throw. These should all be deleted from Appendix A for the reasons stated elsewhere in this submission.

In addition, the statement on typical turbine life discussed in Section 1.3 (f) appears again in Appendix A and should also be deleted.

Appendix B: Noise guidelines

Vestas does not support the adoption of the noise guidelines set out in Appendix B as they are unnecessary, discriminatory and unclear.

The Draft Guidelines suggest additional, more stringent requirements and assessments with respect to noise compliance. No justification is provided for moving to a new set of regulations that are self-proclaimed as the toughest noise standards in the world.

Despite a lack of evidence that the current standards are inadequate, these additional requirements add to the large body of standards and guidelines already in use in Australia, which are already some of the most stringent in the world.

Rather than introduce new and more stringent noise guidelines, New South Wales should adopt noise limits in line with accepted standards such as NZS6808:2010.

This will allow for the separate day time and night time limits, and will allow for the differentiation of residential zones labelled 'rural living' and 'high amenity' (where a stricter limit will apply).

<u>Low frequency noise</u>

The Draft Guidelines state that "*Analysis of wind turbine spectra shows that low frequency noise is typically not a significant feature of modern wind turbine noise and is generally less than that of other industrial and environmental sources.*"

It is therefore unnecessary to require the prediction and monitoring of low frequency noise emissions from wind turbines. This is especially so, given the absence of regulation or limits upon the low frequency noise from "other industrial and environmental sources" as mentioned in the above statement from the Draft Guidelines. This is a further example of the way in which the Draft Guidelines discriminate against wind farms.

In addition, the existing and well validated industry standard models for acoustic propagation are not designed to deal with frequencies at the low end of the audible spectrum, specifically because noise emissions in this band are not considered to pose issues likely to affect the surrounding environment.

Accordingly, Vestas suggests the removal of the requirement to measure low frequency noise from the Draft Guidelines.

Definitions and additional management of noise characteristics

In the Draft Guidelines, the definition of a "sustained exceedance" requires that characteristics are present for not more than 30% in any season.

This places an unfair burden on wind farm proponents who would be forced to test for 12 months in order to demonstrate compliance.

A more reasonable test would be when the characteristic was shown to be evident for 30% of the measurement period which must be more than 14 days (typically the duration required to gather sufficient data for assessment against NZS6808:2010).

When considering special audible characteristics (tonality for example) a sustained exceedance should be used as the test of non-compliance, using our preferred definition above.

Appendices C, D, E and F

No comment.

Retrospective application to existing wind farm proposals and projects

The Draft Guidelines do not make it clear which set of rules will apply to existing wind farm proposals that have already begun their path through the planning system, as well as projects that have already been constructed.

The "Questions & Answers" document issued by DP&I in December 2011 states "it is intended that the guidelines will apply" to "existing SSD and transitional applications".

Such a proposal has already created significant uncertainty amongst investors and should be rejected completely. The Draft Guidelines should only be applicable to

future projects after this current consultation process has been concluded. All other wind energy projects that have already been constructed or commenced their journey through the planning system should be assessed against existing rules rather than the Draft Guidelines.

Further steps

Vestas staff would be pleased to meet with DP&I staff to discuss this letter and answer any other questions you may have. Please contact the writer on (03) 8698 7300 to do so.

Yours sincerely,

[signed]

Ken McAlpine
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