



29 January 2024

Department of Planning and Environment  
New South Wales

Submission made through NSW Planning Portal

Dear Energy Resource Policy Unit,

### **Submission: Draft Energy Policy Framework documents**

The Clean Energy Council (CEC) is Australia's peak body representing the renewable energy industry. We have over 1200 members across the country, from the energy companies who develop, build and operate wind farms, solar farms and storage assets; to the manufacturers of wind turbines, solar panels and other equipment; the banks and investors who finance renewable energy projects; a range of law firms, engineering consultancies and other advisors who support all the above; through to companies who deliver rooftop solar panels and small-scale storage solutions for homes and businesses.

Our purpose is to accelerate Australia's transition to a clean energy future, laying the foundation to become a global clean energy superpower.

Thank you for the opportunity to make a submission on the range of documents on exhibition as part of the Draft Energy Policy Framework. We acknowledge the volume of work involved in the development and production of these documents and welcome the efforts by the Department of Planning and Environment (now Department of Planning, Housing and Infrastructure, DPHI) to establish a broad policy framework that supports the roll-out of renewable energy. We are also appreciative of the extension of the consultation period.

### **The importance of renewable energy – an essential service**

Renewable energy is critical to many elements of NSW's future. Without an appropriately paced roll-out of renewable energy projects, storage projects and transmission infrastructure, NSW puts its energy reliability and affordability at serious risk. A slow energy transition undermines and constrains what NSW can achieve on climate change (around two thirds of NSW emissions are linked to energy consumption), and stymies a critical opportunity to position itself as a modern economy that supports green industries of the future.

## **The scale of the task at hand**

The Australian Energy Market Operator's recently released draft *Integrated System Plan* shows that least-cost pathways involve NSW scaling up wind farm capacity (approximately) from 3 GW to 13 GW and solar farm capacity from 3 GW to 12 GW by 2030. This means almost 20 GW of large-scale renewables is required in the next 6 years, or more than 3 GW each year for the rest of the decade. Given that not all *approved* renewable energy projects reach construction and, ultimately, commissioning (for a variety of reasons), it is likely that an even greater capacity will need to work its way through the planning assessment processes.

Suffice to say, it is critical that the frameworks used to assess these projects are fit-for-purpose. For this reason, it is imperative that the Draft Energy Policy Framework documents strike an appropriate balance between managing the impacts of the industry with the urgent need to connect more renewable energy generation to the grid.

To the extent that the guidance documents are intended to be read and referred to by community members and non-proponent stakeholders, the "Strategic Context" section in the Draft Wind Energy Guideline fails to grasp the scale and urgency of the planning assessment task and does not adequately consider or articulate the consequences of failing to meet the trajectory of project development that is required.

## **General comments on the Draft Energy Policy Framework**

Attached to this letter are more detailed comments on a range of issues covered by the exhibited documents, but by way of overview of key issues:

- We welcome the efforts to make the assessment of visual impacts more predictable and objective, but we submit that a range of amendments are needed in order for the overall approach to assessment to be appropriate. Specific issues include the scope of required assessments, calibration for determining the magnitude of impact, and dealing with 'dwelling entitlements'.
- We consider the 'advised rate' of community benefits to be broadly appropriate, subject to a number of points of clarification in terms of what is included in these amounts and with more clarity around how these funds might be distributed.

While the general guidance provided on landholder and neighbour agreements is reasonable, we do not support the model clause template agreement in its current form.

More generally:

- The guidelines could detail how the regulator will consistently consider and make decisions to achieve an "appropriate balance between competing environmental, commercial, and social factors". The guideline offers the opportunity for the government to rank its priorities and then require assessment officers to follow those priorities, rather than leaving proponents guessing or being required to do more work or to accept unreasonable conditions. We submit that maintaining a reliable and affordable electricity supply and

addressing climate change ought to be very high priorities in this equation, but this does not seem to be reflected in the documents, which often emphasise the impacts of wind projects.

- While Section 4 of the Draft Wind Guideline provide community members with a useful overview of the range of factors that influence wind farm siting, the ‘Suitable areas for wind energy development’ map (Figure 3) implies that areas not included in the map are unsuitable for windfarm development. The implicit suggestion to communities, landowners and residents is that areas not identified as suitable will not be developed and therefore can expect to not have windfarms proposed for their area. This is misleading to communities. The Final Guidelines should provide a clear statement that non-coloured areas of the map are not excluded from wind development. We suggest that if this map is included in the Final Wind Guidelines it should label those areas as ‘more likely’ to have wind farm development and ensure that the map clearly states that any area of NSW may be suitable for wind farm development. While we understand that the map is not intended to form part of the assessment process, language such as “suitable areas” indicates a judgement without considering the merits of a specific application.
- Where some sections of the guidance documents (e.g. technical supplements for visual and noise assessments) provide extensive detail on what is required and how it will be assessed, a range of other issues are explained in very little detail. This risks leaving project proponents without clarity around what is expected and leaves them vulnerable to unpredictable requests and assessment verdicts from DPHI assessors. We submit, for issues where only minimal guidance is provided, that DPHI assessors should avoid taking conservative approaches to their assessments and should avoid requesting information that is not specified in the guidelines as required information.
- On a related note, any planning guideline is only as effective as its implementation. We welcome steps that are underway to increase the resourcing for assessment of renewable energy projects in both DPHI and in key referral agencies. There is also a need for consistent application of the guidelines with a view to supporting development of the wind industry at a pace needed to deliver a successful energy transition to ensures the people of NSW continue to have clean, reliable and affordable electricity supply.

We look forward to working with DPHI to address the industry’s concerns with the draft documents and to work towards establishing updated guidelines that can support the required pace of renewable energy roll-out for the rest of the decade.

Kind regards,

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## Benefit Sharing Guidelines

In addition to the direct and indirect job creation benefits of renewable energy projects in regional areas, wind and solar farms routinely provide additional benefits to local communities around the project. These benefits include local procurement and employment opportunities, and a boost to local and regional spending during a project's lifecycle.

The Draft Benefit-Sharing Guideline proposes establishing 'advised rates' for wind (\$1050/MW/year) and solar (\$850/MW/year) projects. Generally, we see value in having a standardised amount for benefit-sharing: this creates more predictability for both industry (in terms of what is expected) and communities (in terms of a reasonable amount that might be put forward by the project developer). Subject to the subsequent comments in this section, we consider that the nominated 'advised rates' are broadly reasonable and note that making these payments on an annual basis is a superior outcome than a single upfront payment.

We also acknowledge DPHI's exclusion of stand-alone Battery Energy Storage Systems ("BESS") from the benefit-sharing guideline, in recognition that BESS (or 'big batteries') typically have much less impact on surrounding communities.

### **Clarity on what is included in the 'advised rate'**

The Guideline should be explicit that the relevant number of megawatts for the purposes of benefit-sharing is the number of megawatts as constructed or as connected to the grid, not the amount of an original project application or even the approved capacity of the project.

We note that the advised rate does not include costs associated with private agreements with landholders or project neighbours "to either host or manage impacts from the development". That is, it does not include land lease payments or the costs incurred with any required mitigations (required either by agreement or by planning approvals – e.g. Vegetation screening to manage visual impacts).

Our interpretation of the draft Guideline is that voluntary payments to project neighbours (for example, a financial contribution per turbine within a certain distance of the neighbour's home) that are *not* required mitigations are part of the advised rate. That is, part of the \$1050/MW/year covers payments to project neighbours based on the number of turbines within a certain distance of their land. This type of neighbour payment is not specified in the draft Guideline, and it should be made more explicit to ensure that these payments are part of the advised rate, not additional to it.

### **The use of Voluntary Planning Agreements**

It is our understanding that the proposed benefit-sharing framework and the 'advised rate' are intended to replace the current approach of proponents agreeing to establish Community Enhancement Funds (or equivalent) through Voluntary Planning Agreements with individual

Councils. We welcome this change, but note that this point should be articulated more clearly in the Guideline.

In addition to an explicit reference to this in the Guideline, we submit that the Minister should make a determination/direction under s 7.9 of EP&A Act explicitly prohibiting additional development contributions under Part 7 of EP&A Act where a project attracts a benefit-sharing rate under solar/wind guidelines.

The Minister should also make a direction under s 7.17 that the consent authority (i.e..DPHI) cannot impose a condition that a fixed development consent levy be paid per s 7.12 where a project attracts a benefit-sharing rate under solar/wind guidelines.

### **Division of funds between communities and councils**

The draft Guideline assumes that benefits at the “local community” (or LGA) scale will “generally be greater in both in financial value and the number of potential recipients or benefactors”, compared to “neighbourhood” level payments (i.e. those closest to the project). The draft Guideline recommends that “these programs be centrally administered and distributed through the council of the relevant LGA. Alternatively, these programs could be administered by the applicant in partnership with an established community organisation or institution”. Proponents need to propose a benefit-sharing model as part of the EIS.

Our members have a strong preference for ensuring that near-neighbours of their projects receive a reasonable share of benefit-sharing schemes. Firstly, working with those residents to identify the best ways of distributing those funds is the clearest way in which a renewable energy proponent can directly take on board the feedback of the community and support the community’s objectives/priorities (moreso, for example, than acting on feedback about turbine placement, which needs to be considered in the light of a range of technical factors). Secondly, those are the residents most affected by the project and therefore their preferences about benefit-sharing should take some primary.

To that end, we consider that the Guideline should be more explicit about the share reserved for those “neighbourhood” scale benefits.

For example, the Guideline could include a specific split between neighbourhood and Council as benefit-recipients – e.g. 30:70 or 40:60. This would help avoid a situation where Council could request 90-100% of the benefit-sharing scheme, which would effectively deny proponents the opportunity to work with those closest to the project on their priorities. It also risks denying proponents the credit for their financial contributions: if benefit-sharing funds from a renewable energy project are not disseminated in a way that clearly acknowledges and recognises the project as the source of the funding, then the benefits these contributions provide to the overall social licence of the industry is diminished.

The Guideline could also include a note that the proportion of benefit-sharing that goes to Councils could be split between multiple councils if the project either straddles multiple LGAs or where the nearest town to the project is in a neighbouring LGA to the project itself.

We also consider that if a proposed benefit-sharing scheme complies with the general direction of this Guideline, then a Council should not be able to object to the project (which would trigger going to the Independent Planning Commission) on the basis of not accepting the proposed benefit-sharing scheme. This seems like a reasonable feature of a framework that is intended to provide greater consistency and transparency.

Further, for the purposes of an EIS, benefit-sharing schemes or estimates of financial contribution based on the Guideline rate should not have to be final, rather they should provide a summary of what a proponent has heard from communities and what it has committed to providing.

### **The intersection with EnergyCo's Access Fees**

In addition to contributions via the 'advised rate', renewable energy projects in Renewable Energy Zones will also be contributing to community and employment outcomes via access fees payable to EnergyCo. The government has indicated that it will spend \$1,700/MW/year of that fee "for community purposes" and \$600/MW/year "for employment purposes".

While it is outside the scope of the current consultation, this EnergyCo component of this two-pronged set of community contributions by renewable energy projects should have clear accountability/transparency frameworks around the use of those funds. As noted above, it should be made clear publicly when distributed those funds that these benefits are flowing as a result of renewable energy projects being constructed.

### **Revision of or deviation from the 'advised rate'**

The inclusion of a trigger for reviewing the advised rate in the event of changes to Council rates or other parts of the contribution framework is welcome, though the language of how/when this review is triggered could be tightened. Currently, it is expressed as anything that "materially affects" renewable energy development. We submit that this should be changed to *any* change to Council rates (perhaps other than CPI-related changes) as requiring a reconsideration of the 'advised rate' for benefit-sharing programs.

We note that the benefit-sharing rates are "advised", "suggested", "recommended", rather than required or mandatory. This indicates that there is scope for adjustment on a project-by-project basis. By specifying an advised rate, though, it is likely that the onus will be on the proponent to justify why they might propose a benefit-sharing rate below the advised rate.

To assist with community/Council expectations of potential contributions, the Guideline could articulate a range of factors that may lead a project to offering a rate below the 'advised rate'. For example, located in an area with a more marginal resource (particularly for wind projects) or if the project is trialling novel design features or programs that are aimed at minimising other impacts (those features/programs may reduce profitability of the project). Another example might be projects in more remote areas, with fewer nearby residents/towns with whom to share benefits but with higher transmission costs (if the project is further from the existing network).

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## Landscape and visual impact assessment

We appreciate DPHI's efforts to address visual impact assessment challenges in the *Draft Wind Energy Guideline* (Draft Wind Guideline) and *Technical Supplement for Landscape and Visual Impact Assessment* (Visual Impact Technical Supplement).

The CEC understands that windfarms may cause visual impacts in regional areas. We acknowledge genuine community and landowner concerns about changes to their visual environment posed by renewable energy generation. We further acknowledge the challenges confronted by decision-makers in assessing potential visual impacts to existing dwellings and/or dwelling entitlements. The assessment of visual impact is challenging not least because what constitutes a visual impact is largely subjective in nature albeit somewhat afforded for in land zoning objectives.

We also acknowledge that the vast majority of NSW landscapes have been heavily modified for both community services and commercial benefits for many decades, including for agriculture, urban development, forestry and mining. The renewable energy transition is, in many ways, part of the next wave of land modification.

Key issues raised by CEC members regarding the visual impact assessment process proposed in the Draft Wind Guidelines and Visual Impact Technical Supplement are provided for in the sub-sections below.

### **Setback, visual magnitude grid tool, and character**

We acknowledge DPHI's efforts to create a more objective approach to assessing visual impact. Guidance on visual impact should lead to more predictable outcomes for proponents, landowners and communities, and facilitate advice and assessment consistency from DPHI assessment teams.

#### *Setback*

The visual setback requirements based on turbine height propose onerous challenges that will contribute to project development and assessment processes. These challenges will increase in areas designated as appropriate for windfarm development, potentially limiting the number of wind generated energy in NSW. In effect, proponents looking to install 250m turbines – the general height of a modern turbine – will be required to secure agreements with all neighbouring landowners within a 2km radius. This may result in a significant decrease in project size (e.g. by removing turbines) and therefore generating capacity, due to visual impact.

Further, it is unclear to the CEC why a pre-defined setback is required when the visual magnitude grid tool presents an entire methodology for quantifying the visual impact of turbines. For example, we presume that the cell-based assessment would find turbines within a certain distance of 'sensitive receivers' would be classified as having 'high' visual sensitivity regardless of the setback

distance and trigger detailed visual assessment activities. That is, the magnitude of the visual impact can be calculated without the setback.

Section 3.1 of Draft Visual Impact Technical Supplement states that “if a sensitive receiver is located within the setback distance it will trigger a high visual impact unless the turbine(s) would be *largely screened* by topography or vegetation” (emphasis added). The application of the “largely screened” exemption from assessment as shown in Figure 3 of the seems unreasonably restrictive. In that example, turbines that are barely visible behind trees at all three distances are classified as “not exempt from setback”. It is hard to see how most of these examples are not “largely screened”.

#### *Visual magnitude grid tool*

The number of cells within the “very high impact” category, from 28 cells, is low. This indicates to communities that wind turbines are offensive to visual amenity at a relatively low cell-count. Our view is that the number of cells that constitute “high visual impact” should be significantly increased to at least 45. Increasing the number of cells will assist communities to set a more reasonable expectations as to when visual change in the landscape is acceptable.

Further, the magnitude of rating ought to be consistent for all development, including solar and transmission otherwise it implies that wind development is more visually offensive than other electricity generation and transmission developments. Currently, fewer cells need to be occupied for wind projects to be classified as ‘high’ impact.

#### *Land characteristics and sensitivity*

Our view is that “values” should be removed from assessment of landscape character. Planning regulations and guidance should be based on objective methodologies rather than subjective opinions. As mentioned above, the vast majority of landscapes in NSW have been significantly modified for various private and commercial purposes over many decades – while we have become accustomed to the appearance of regional landscapes, these are (mostly) not natural and are ever-evolving. Renewable energy generation is the latest in a long line of changing land use practices.

#### *Visual impact assessment process*

Both Queensland and Victoria limit the requirement for detailed visual impact assessment to 4 kilometres. The range at which a detailed visual impact assessment must be undertaken should be reduced from 8km to 4km. This would reduce the volume, and therefore time and cost, of a detailed assessment, without compromising the assessment of receivers that are most impacted by a project.

#### *Cumulative impact*

There is currently no guidance on how windfarm proponents can assess cumulative visual impacts. The purpose of creating a REZ and providing renewable energy development guidance indicates an inevitable concentration of renewable energy projects which in turn indicate greater cumulative impacts including to visual amenity. It would be a perverse outcome if windfarm approvals are



denied on a cumulative visual impact basis in geographical areas that are otherwise designated as intended focal points for renewable energy development.

The Final Wind Guidelines should provide a quantifiable methodology for assessing how much change in any landscape is acceptable from a visual impact perspective, particularly in renewable energy zones (REZs) and areas identified as appropriate for windfarm development. A quantifiable methodology for assessing cumulative impact should articulate what renewable energy developers need to consider in preparing visual impact assessment documentation. Boundaries for what is essential to consider in a cumulative visual impact assessment are necessary. This should include which other turbines need to be considered as part of the cumulative assessment. We do not consider it appropriate to consider turbines for projects that are merely proposed or in the planning system.

#### *Definition of 'dwelling'*

The Visual Impact Technical Assessment defines 'dwelling' as having 'the same meaning as the *Standard Instrument - Local Environmental Plan* (a room or suite of rooms occupied or used as a separate domicile) as well as where it meets the criteria outlined in Section 1.3'. CEC members have expressed frustrations that despite the definition of 'dwelling' in the *Standard Instrument* an inordinate amount of time and difficulty is directed at attempting to identify relevant 'dwellings' to include in visual impact assessments of windfarms.

This definition requires clarification on when a building is a 'dwelling', including how often the building is used and for what primary purpose (e.g. if it is shearing quarters that is only used for accommodation for a small number of weeks per year). Further, for the sake of completion the definition should expressly include what a 'dwelling' is and is not as outlined on pages 8 – 9 of the Visual Impact Technical Assessment. We agree that dwellings that have been constructed without development approval from the relevant council (i.e. unlawful dwellings) should be explicitly excluded.

#### **Dwelling entitlements and applications**

A significant challenge for both decision-makers and wind developers is the extent to which visual impact can be assessed for a dwelling entitlement, being essentially an assessment undertaken for a potential future impact on a dwelling yet to exist. It is very difficult for anyone to assess the visual impact on an entitlement that a landowner may or may not have an intention to act on, and in some cases may never have given much or any thought to act on.<sup>1</sup> Overly protecting entitlements to develop theoretical housing risks preventing other landowners from exercising their rights to diversify their income streams and drought-proof their agricultural activities.

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<sup>1</sup> Including in circumstances where a landowner had not thought to act on a dwelling entitlement until a windfarm proposal was made for their area. CEC members have relayed to us experiences of landowners lodging an application to act on a dwelling entitlement in order to delay or prevent a windfarm development rather than to derive benefit from the dwelling.

Renewable energy generation from wind and solar provide an essential service and already face significant siting challenges. Based on these challenges, combined with the subjectivity of visual impact assessment for an entitlement, we submit that the visual impact assessment for dwelling entitlements is unnecessary for windfarm developers, except in certain circumstances. These exceptions could include:

- Where a landowner can show they have taken significant steps to act on a dwelling entitlement *before* community consultation for a renewable energy project has commenced, such as by having made demonstrable plans to submit a development application.
- Where a landowner can demonstrate a genuine intention to seek development consent to for and construct a dwelling and have already identified the location for the future dwelling so that impact assessment can be undertaken.
- Crown land flagged for development.

Alternatively, an exemption from considering dwelling entitlements could be applied in Renewable Energy Zones on the basis described above.

In the absence of removing an obligation to assess visual impact on dwelling entitlements (unless an application to act on the entitlement has already been made prior to wind farm development), the Final Wind Guidelines must place strong boundaries around visual impact assessment for dwelling entitlements as outlined below.

*Remove assessment subjectivity and impose objective criteria for significant visual impact on a dwelling entitlement.*

As currently drafted, the assessment process should be 'qualitative and 'focus on whether a proposed development would unduly impact on the ability for a landowner to act on a dwelling entitlement',<sup>2</sup> but does not define 'unduly impact' or 'ability to act'. Nor is guidance provided on when the test for 'unduly impact on the ability to act' on a dwelling entitlement is enlivened and avoidance and mitigation measures required.

While we support the position that detailed quantitative assessments are not warranted, there is a risk that a lack of guidance around qualitative assessments of impact could expose the wind energy industry to overly conservatively determinations that the visual impact on a dwelling entitlement is significant.

As recommended above, an objective criterion could be that visual impact on dwelling entitlements are limited to circumstances in which a landowner can provide demonstrable steps they have taken to act on the entitlement. In the absence of this being accepted, and to avoid subjectivity,

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<sup>2</sup> Visual Impact Technical Supplement, p 27.

alternative criteria for objective and impartial assessment should be included in the Final Wind Guidelines. These criteria could include:

- Explicit exclusion of landowner assessment of visual impact on a dwelling entitlement, and landowner preference for siting of a dwelling – i.e. the opinion of the specific landowner about what constitutes an undue visual impact – is not a valid consideration for decision-makers.
- whether and how a potential dwelling could be sited to avoid visual impact include;
- Circumstances in which significant visual impact arises and clarity on when the test for whether a proposed development unduly impacts on the ability for a landowner to act on a dwelling entitlement is satisfied (e.g. where siting is genuinely restricted) and how these can be remedied (including by land acquisition);
- Instruction to decision-makers that impact to dwelling entitlements should not be given the same or similar weight as extant dwellings or dwelling applications that were lodged prior to a landowner's knowledge of a windfarm development proposal; and
- That a decision-maker reasonably assure themselves that a landowner's objection to a windfarm development is made in good faith rather than to prevent project approval.

*Establish a clearer and less onerous process for identifying the existence of dwelling entitlements.*

A significant challenge for developers is determining the number of relevant dwelling entitlements within the setback area. A dwelling entitlement only exists if an individual lot satisfies criteria set out in a Local Environment Plan. The process to comprehensively identify relevant entitlements is time consuming and may be inaccurate depending on the quality of a Council's record keeping practices. Final Wind Guidelines should include either a requirement on Councils to (a) maintain accurate and complete records of dwelling entitlement and make those records available to developers, or (b) confirm, in response to a request from a wind developer, which parcels of land relevant to a given windfarm development contain a dwelling entitlement. Developers should then be able to rely on the accuracy of that advice throughout the visual impact and development consent process.

*Permit visual impact on dwelling entitlements through representative assessment.*

In order to reduce the number of dwelling entitlements needing a visual impact assessment, the Final Wind Guidelines could permit developers to undertake a representative visual impact assessment of a range of dwelling entitlements within a setback area.

*Guidance on managing dwelling applications is required*

The Draft Wind Guidelines do not provide guidelines on how both DPHI and windfarm proponents can manage a scenario in which a landowner hastily submits a dwelling application once they are aware that a windfarm proponent has commenced community consultation. In some cases, dwelling applications and housing developments are made by bad faith actors to cause damage to a windfarm project.

The Final Wind Guidelines should contain a “cut-off” date for dwelling applications to protect wind projects from subsequent housing development applications. Without this protection, proponents will be discouraged from conducting proper community engagement early in a project’s development process, as required in SSD guidelines. The “cut-off” date could also be triggered once a landowner has received a letter of intent from a proponent to commence community consultation, or it could take effect once a proponent has lodged a scoping report and requested a Secretary’s Environmental Assessment Requirement (SEARs).

Further, guidance to landowners who do make a dwelling application after the “cut-off” date must take into consideration the future windfarm and the developer of the house should bear the onus of minimising their exposure to the visual impacts of the wind farm. Dwelling application approvals should contain a condition of consent that the landowner takes demonstrable, reasonable continuous steps to complete construction of the dwelling and within a certain timeframe otherwise the dwelling consent becomes void.

### **Alternative methods to undertake assessment where access to land is unavailable**

We welcome the inclusion of alternatives to undertake visual impact assessment where access to land is denied or unavailable as provided for in Appendix D of the Visual Assessment Technical Supplement. We make the following three recommendations for the Final Wind Guidelines.

*Provide certainty on when use of alternative methods is appropriate.*

The Final Wind Guidelines should make clearer when a proponent can safely determine that genuine attempts to contact a landowner has failed. For example, guidance on the number of a combination of unsuccessful property visit requests, unanswered telephone calls made, emails and/or postal correspondence sent without reply, over a period of time constitutes a reasonable and unsuccessful attempt to gain access to a property and protects a developer from legal consequences of using alternative assessment methods (for example against use of drones on private land that might otherwise be illegal).

*Specify that use of any of the three alternative methods is acceptable.*

In circumstances where any alternative method can be used to adequately undertake visual impact assessment, that method should be accepted by DPHI assessment teams. DPHI assessment personnel should not impose or request more onerous and/or expensive assessment methods, such as LiDAR, over less expensive but equally adequate assessment methods.

*Threshold assumption for wireframe should be ‘reasonable’*

Proponents should be expected to use a *reasonable* assumption about vegetation or other built elements in the viewshed that could screen the project, *not* worse-case assumption. It is unclear why a proponent should have to consider worse-case scenarios in a situation where they cannot access land for reasons out of their control.

### **Shadow flicker and EIS modelling**

Whilst shadow flicker is included in a developer's environment impact assessment (EIS), our view is that where a visual impact agreement is entered into by a landowner shadow flicker modelling and assessment ought not be required for an EIS. We note that the Draft Wind Guidelines acknowledges similar positions for visual impact assessment and noise. It is not clear why a different approach should apply to shadow flicker.

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## Draft Private Agreement Guideline

Our understanding is that DPHI intends for the Draft Private Agreement Guidelines (Draft Agreement Guideline) to provide support and guidance to landowners and communities about land use agreements, and that (a) there is no requirement to include the Draft Private Agreement template as part of the planning process and (b) that its clauses are not mandatory requirements of an actual agreement. The inclusion of a template commercial land use agreement in the tranche of renewable energy guidance material is based on NSW Government's response to a recommendation made by the NSW Agriculture Commissioner that 'the NSW Government and the renewable energy sector should develop and publish standard agreement templates[.]'<sup>3</sup>

We can see the benefit in standardising some elements or clauses of commercial agreements between landowners and renewable energy developers. Standardisation promotes transparency, creates consistency across the industry (including by lifting the standard of documents used by less mature developers), reduces transaction costs, and sets community and landowner expectation on the content and obligations contained in agreements. As drafted, the *guidance* part of the Draft Private Agreement Guidance is appropriate.

However, if the purpose of the Draft Private Agreement Guidance is to provide guidance and support, including to laypersons not familiar with such agreements, then it should not include a template agreement that could easily be misconstrued as standard practice or even appropriate in each circumstance. This could easily cause confusion and conflict.

Some examples of where confusion and conflict may arise:

- The Draft Private Agreement generally contains definitions and clauses that are not representative of standard agreements and may not meet the requirements or standards of project financiers. This indicates that the Draft Private Agreement was not prepared in consultation with the renewable energy industry.
- The level of detail of impacts a landowner will experience as suggested by the Draft Private Agreement Guideline, and should be included in the Draft Private Agreement template, is inappropriate at the Scoping Report stage of development if that is when the Agreements must be entered into. Without an assessment of actual or potential impact, landowners will not be provided with accurate information and be left to expect they are at risk of experiencing all impacts. Further, precise impacts cannot be particularised in such a way

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<sup>3</sup> NSW Ag Commissioner report, recommendation 7, p 10.

that is accurate, as changes may result as late as 'post approval' if turbines are micro-sited. Finally, there is a risk that new impacts are not covered by an Agreement that imposes an obligation on developers to fully particularise impact at Scoping Report stage (and despite the developer being required to pay additional compensation).

- The inclusion of 'potential health impacts' in the definition of 'impact' at clause 1.1 is inconsistent with at least the Draft Wind Energy Guidelines which state that the NSW Government's position is that there is no consistent evidence of adverse health impacts from windfarms relating to infrasound, and that it is unnecessary for windfarm developers to undertake health impact assessment.<sup>4</sup> If the government has determined that assessment of the risk is unnecessary but communicates expectation that assessment may be necessary through this definition of impact, everyone becomes confused.
- Clauses 12.1 and 12.2 are prefaced with a highlighted note stating that the clauses 'should not be deleted and legal advice should be sought before considering any requests to delete this clause'. Imposing a mandatory clause in a document intended to provide guidance, particularly where emphasis is given to the non-mandatory nature of the template and clauses, is confusing.

Finally, we query whether it is appropriate for DPHI to require copies of private commercial agreements between landowners and developers and on what basis the Department believes it is appropriate to impose this obligation. If anything, the Department should be satisfied to receive a letter from the landowner confirming they have entered into an agreement and are now an associated residence. An obligation on developers to include of a copy of an entire commercial agreement invites speculation that DPHI intends to scrutinise the content of that agreement, which is in our opinion outside the scope of the Department's proper role as a planning authority.

Ideally, government guidance to communities and landowners on what to consider when negotiating a commercial agreement should be informative and empowering. Our view is that the guidance itself satisfies this criterion but the Draft Private Agreement does neither. It should be removed, or significantly modified, or reduced to a small number of model clauses that address specific planning-relevant issues and are genuinely representative of standard practice. The [Queensland Renewable Energy Landholder Toolkit](#) is an example of a range of material provided by the Queensland government (and the Queensland Farmers Federation) to assist landowners considering hosting renewable energy project on their property.

We recommend that finalisation of the Draft Private Agreement Guideline template be subjected to a separate process of review and refinement in close collaboration with industry, as was recommended by the NSW Agriculture Commissioner. This collaboration should be extended to a range of relevant experts including landholder groups such as NSW Farmers, the Law Society of NSW, law firms with expertise in these types of agreements and the Australian Energy Infrastructure Commissioner as well as the renewable energy industry and state government. We note that the particular terms of any agreement are not a feature of planning assessment/approvals,

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<sup>4</sup> Draft Wind Guidelines pp 29 – 30.

and therefore finalising that document separate to the assessment framework should not be problematic.

If the Draft Private Agreement template is not removed for review and refinement as suggested in the paragraph above, the CEC requests an opportunity to provide more detailed comments on the template.

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## Other matters

### **Bird and bat impact assessment**

While the bird/bat impacts of wind farms warrants proper attention, we welcome the note in the guidance that the mortality rates are much less significant than other causes of bird/bat death – such as flying into buildings and being killed by feral or domestic cats. This is important context. Overwhelmingly, other types of human activity cause significantly greater adverse impacts for biodiversity than do renewable energy projects, including land clearing for agriculture and the direct impacts of climate change.

The details for assessing and managing risks of impact to birds and bats from turbine strike is set out in the Biodiversity Assessment Methodology (BAM) and is currently being revised. The BAM and subsequent iterations should singularly outline assessment and mitigation activities such as adaptive management, including those outlined in the Draft Wind Energy Guidelines. To that end, the “key principle” in the Draft Wind Energy Guidelines imposing a turbine setback requirement of at least 100m from National Parks, state conservation areas and nature reserves should be predicated on a site-specific assessment of risk informed by data gathered as a requirement of the BAM. As currently drafted, the 100m setback appears arbitrary in the absence of context.

The Draft Wind Energy Guidelines also sets out examples of actions proponents can consider to avoid and/or minimise bird and bat strike, including that turbine shut-downs be scheduled during critical period or specific times of high activity. There is no detail on how mitigation measures should be considered, which is appropriate given the detail will be contained in a BAM and Adaptive Management Plans, but the Guidelines do not provide much guidance on how planning assessors will make decisions and consider trade-offs in biodiversity impacts. Specifically on turbine curtailment, however: there should not be a blanket approach to imposing schedule turbine shut-downs. Adaptive curtailment may be appropriate on a site-by-site or even turbine-by-turbine basis. As currently drafted, the Draft Guidelines introduce a risk that schedule turbine-shut down will be seen as a blunt solution and applied in a way that risks an entire project’s viability.

### **Decommissioning and waste management**

There are some unrealistic expectations around the level of detail required for a process that would be 25-30 years away. For example, Section 5.8.3 requires ‘identification of viable end markets for waste materials generated at each stage of the project’ and ‘selecting waste management providers that specialise in recycling end-of-life wind turbine blades and associated infrastructure.’ At the EIS

phase of a project, it is not possible to nominate, with much precision, viable end markets or waste management providers that may or may not exist in 30 years.

The documentation expected by DPHI on these matters should accept the inherent uncertainties in a process that is decades away, which should mean a lower level of specificity should be satisfactory.