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Planning legislation updates 2017
NSW Department of Planning and Environment
GPO Box 39
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By online submission

NSW Planning legislation updates 2017 – Consultation Feedback
Proposed amendments to the *Environmental Planning and Assessment Act 1979*

Goldwind Australia Pty Ltd (**GWA**) supports the Department of Planning and Environment's (**Department**) review of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) and acknowledges the State Government's aim to review and enhance the following legislative components:

- enhancing community participation;
- completing the strategic planning framework;
- development pathways;
- State significant development;
- clearer building provisions;
- elevating the role of design; and
- improving enforcement.

GWA has prepared this submission to assist the Department in its reform of the EP&A Act, insofar as the proposed amendments affect the operation of renewable energy projects within the State.

1. Executive Summary

GWA's submission relates to two of the areas contemplated in the Department's review:

(a) development pathways; and
(b) State significant development.

The aim of GWA's submission is to highlight the need for flexibility in development approvals for renewable energy projects, so that the Department is fully appraised of the legislative regime required to promote sustainable energy supply outcomes.

In summary:

(a) The flexibility of the modification power under section 75W should continue to apply to renewable energy projects. In the event that existing renewable energy transitional Part 3A projects are converted to SSI, it is submitted that all current and future renewable energy projects should also be converted to SSI, with the ability to utilise the modification power under section 115ZI of the EP&A Act.

(b) If renewable energy projects are not able to utilise section 115ZI of the EP&A Act, and section 75W is to be repealed, section 96 should be amended in the following ways:

1. to allow modifications of renewable energy projects to be made to achieve specified improvements to the project or improved outcomes; and
2. the "substantially the same" test for a modification to a renewable energy project is assessed against the project's current approval rather than the original approval. The overall environmental impact of the project could then be assessed as a different process, separate to the jurisdictional power to modify.

It is extremely important that the ability to modify renewable energy projects in a flexible manner similar to section 75W is retained (or permitted). Without this flexibility, the effect of the EP&A Act will be to deter investment in renewable projects in the State and undermine the market's ability to provide innovation in renewable energy technology.

2. Background

GWA is a developer of large renewable energy projects in NSW and Victoria. GWA has been involved in the construction and operation of the Gullen Range Wind Farm on behalf of the project owner, and is also involved in the construction of the White Rock Wind Farm. GWA has also obtained development consent for two solar farms associated with the Gullen Range and White Rock wind farm developments.
These projects are important to NSW in the context of:

- transitioning towards more sustainable energy sources; and
- addressing State and Commonwealth objectives to reduce emissions.

The projects should also be viewed in their wider context, namely the concerted global effort to address the consequences of climate change through mitigation and adaptation initiatives.

Large renewable energy projects have a number of complexities that warrant a degree of flexibility in the planning, determination and development processes, especially in relation to providing efficient means to vary approvals that remain consistent with planning objectives and outcomes.
In the case of wind energy developments, technology has evolved and continues to evolve rapidly. Such evolution results in new equipment that may improve electricity outputs, environmental outcomes or

delivery costs, but which might not have been specifically contemplated at the time that the relevant development or project application was submitted.
In these circumstances, the presence of inflexible legislative provisions would inhibit a proponent's ability to implement such new technology (incorporating any necessary design changes) and lead to a poor planning outcome in terms of power generation and environmental and social impact. In order to attract investment, project proponents and financiers need the certainty provided by a flexible and forward thinking planning regime.
The thrust of this submission to the Department is that sufficient flexibility in the planning regime must be preserved to deliver the best possible planning, social and environmental outcomes from renewable energy projects in NSW.

3. Development pathways

The Department's website summarises the proposed amendments to development pathways as providing '*improvements to the various development pathways and preventing the misuse of modifications.'*

GWA's experience of the planning process is that it can be protracted, with development and project applications taking significant time (in some case, years) to determine. Particular to the renewable energy industry, which is subject to increasingly rapid technological development, proponents of approved developments can then be subject to further protracted timeframes when seeking modifications to their project to take advantage of new technology.

GWA believes that there are good reasons to enable flexibility for renewable projects – both at the stage of imposing conditions on an approval as well as in relation to the available modification pathway – given that during the post-approval period a number of options are considered and finalised, such as:

- the procurement of equipment which may change following the approval of the project due to rapid technological development;
- the detailed design of the project, which may be dependent on this changed equipment; and
- the settling of various legal, commercial and financing elements.

In the area of renewable energy projects, the goal is to tap into abundant natural resources to provide clean, reliable and competitively priced energy for consumers of power while ensuring that environmental objectives for the project are met. Options to optimise the project may only be confirmed post approval following commitments to pre-development planning expenditure.

It is GWA's belief that the section 75W modification provisions are more appropriate than the more limiting provisions of section 96. Projects such as White Rock Wind Farm (MP10_160) have been acquired and

are being developed under an approval gained under Part 3A and the amendments may restrict proposed investment without delivering improved environmental outcomes. Indeed the amendments could limit or delay future investment.

3.1. Proposed amendments to the continued operation of section 75W

Schedule 6A of the EP&A Act provides for the continued operation of Part 3A to projects which were approved under that part prior to its repeal. Under the proposed amendments, Schedule 6A will be omitted, which will remove the modification provisions contained in section 75W.

GWA considers that the current flexibility to submit modification proposals to the Minister, which is afforded under section 75W, is not merely appropriate but necessary for renewable energy projects.

Given the need to preserve the flexibility granted to Part 3A projects by the operation of section 75W of the EP&A Act, GWA proposes that the Department's intended repeal of section 75W, if it must go ahead, take place in one or both of the following circumstances:

(a) a replacement modification power be enacted (whether by amendment to section 96 of the EP&A Act or otherwise), which grants renewable energy projects the same degree of flexibility in modification as that currently afforded to transitional Part 3A projects; or
(b) as contemplated by the Summary of Proposals paper dated January 2017, all energy (including renewable energy) transitional Part 3A projects be converted to State significant infrastructure (**SSI**), with the effect that the modification power under section 115ZI is applicable.

In the event that option (a) above is pursued, we have considered some proposed amendments to the existing modification power under section 96 of the EP&A Act, which are discussed below in Section 3.2.

In the event that option (b) above is pursued, GWA submits that all renewable energy projects be converted to SSI (i.e. not just those renewable energy projects that are transitional Part 3A projects). This will enable a parity between projects and enable the delivery of clean energy to the State, produced using the most efficient and technologically advanced equipment available.

Submission: The flexibility of the modification power under section 75W should continue to apply to renewable energy projects. In the event that existing renewable energy transitional Part 3A projects are converted to SSI, all current and future renewable energy projects should be considered SSI and be able to utilise the modification power under section 115ZI of the EP&A Act.

3.2. Potential amendments to section 96

Currently section 96 of the EP&A Act requires any modification to a development consent to be "substantially the same development as the development for which consent was originally granted". GWA considers that this is too inflexible for renewable energy projects and that this may result in sub-optimal developments that deter future development and provide bad planning outcomes for the State. GWA proposes that if option (a) above is pursued, section 96 should be amended in two ways.

Firstly, section 96 should be amended to allow modifications to be granted (whether or not it is "substantially the same development") where the proponent can demonstrate that the modification will result in an improved environmental or planning outcome. For example, such improvements could include a reduction in the project's impact, increased productivity or efficiency of the project without increased environmental impact, or the delivery of better affordability, reduced cost outcomes or greater power generation reliability.

These improvements are all important planning objectives and the need to obtain them is increased by the cloud of uncertainty hanging over the supply of power to the nation. These outcomes are also consistent with the Australian Government's focus on increasing competition, energy productivity and investment, to deliver reliable and cost competitive energy to households and business. It is important that planning legislation amendments enable the achievement of these objectives. If necessary, such a modification could be limited to renewable energy projects.

Secondly, section 96 should be amended so that the words "for which consent as originally granted and before that consent as originally granted was modified (if at all)" in section 96(2)(a) are omitted and replaced with "as that for which consent has been granted (as modified, if at all)". Such an amendment takes into account the evolving nature of renewable energy projects.

To ensure that all environmental impacts are captured, however, a further obligation to consider the overall environmental impact of the project (incorporating all modifications) could be included within the modification requirements of the section. This would separate out the jurisdictional question of whether a modification *could* be granted, from the merits question of whether the modification *should* be granted.

Submission: If option (b) above is pursued, section 96 should be modified in the following ways:

3. Section 96 should be amended to allow modifications to renewable energy projects which result in specified improvements to the project or improved outcomes; and

4. Section 96 should be amended so that the "substantially the same" test for a modification to a renewable energy project is assessed against the project's current approval rather than the original approval. The overall environmental impact of the project could then be assessed as a different process, separate to the jurisdictional power to modify.

4. Wind Energy Guideline for State Significant Development

The Department website summarises amendments to State significant development as '*better environmental impact assessment and more effective conditions of consent*'.

As a proponent of renewable projects, GWA seeks realistic and practical legislation that does not frustrate progressive planning decisions but enables intelligent and sensitive decisions to be guided by thoughtful development guidelines. Less prescriptive conditions are often more appropriate for renewable projects. Prescriptive conditions can restrict the ability of projects to harness the latest technological developments and result in sub-optimal environmental outcomes.

In respect of wind energy developments, the Department has directed significant effort to the development and implementation of the Wind Energy Guideline for State Significant Development (**Guideline**). We note that despite the title, this document should continue to apply to wind energy projects that are categorised as SSI following the reforms.

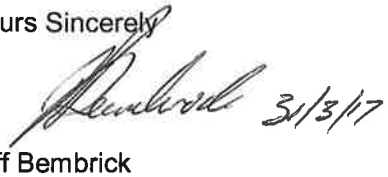
GWA considers that the Guideline gives proponents developing wind farms confidence in planning outcomes. With improved guidance, and provided environmental assessment is consistent with that guidance, GWA is of the view that the scope for the modification of wind energy developments should be broadened in line with the Guidelines. This approach will ensure the best outcome in terms of the development of wind energy projects and the supply of clean energy to the State.

5. Conclusion

It is important that the proposed changes to the EP&A Act result in the right planning regime for renewable energy projects that maximise the environmental, community, energy outcomes. GWA believes that renewable energy projects must have greater flexibility in order to provide these benefits. This flexibility will allow projects to take advantage of new technological developments and bring investment to the NSW renewables industry. In turn, it will result in better outcomes for proponents of development, the NSW community and the environment. GWA thinks that amendments in line with these submissions will facilitate these best outcomes from renewable energy projects.

Should you have any questions on this submission, please do not hesitate to contact me at jeffbembrick@goldwindaustralia.com or by phone on 02 9008 1715.

Yours Sincerely



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