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Department of Environment, Land, Water and Planning
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Lodged Electronically: Engage Victoria; windfarmnoise@epa.vic.gov.au

Subject: Amendments to Proposed Environmental Protection Regulation
Submission of Comments on the Proposed Regulatory Package

To the Department and Reviewer of Submissions,

1. Introduction

This submission provides the comments of Goldwind Australia Pty Ltd (GWA) to the consultation package provided by the Department of Environment, Land, Water and Planning (DELWP) in relation to the proposed Wind Energy Facility (WEF) Regulations (the proposed Regulations) and the *Regulatory Impact Statement (RIS) – Noise and Wind Energy Facilities*.

GWA welcomes the opportunity to provide comments on the proposed Regulations as part of the upcoming changes to the environmental law regime under the *Environment Protection Act 2017* (Vic) (EP Act). It is important to note that Victoria has the most wind farms of any state in Australia. WEFs make significant contributions to the move towards renewable energy and provide a valuable source of employment opportunities within the state.

GWA and its project entities are delivering two substantial WEFs in Western Victoria that together represent investment of approximately 1.8 Billion dollars in clean energy infrastructure for Victoria and provide significant employment opportunities and economic benefits. The Goldwind projects are:

- Moorabool Wind Energy Facility (Stage 1 (North) and Stage 2 (South)) - 104 wind turbines; and
- Stockyard Hill Wind Energy Facility – 149 wind turbines

Together, the two projects have involved installation of 253 wind turbines, each of three megawatt (MW) rating, with a total renewable energy capacity of 842 MW. GWA has been the primary developer of the two projects that went through their planning stage during 2016 and 2017, construction occurred during 2018 to 2020 and both WEFs are expected to be progressively commissioned during 2021/2022.

These projects provide substantial additional renewable energy capacity for Victoria, thereby reducing carbon intensity of electricity generation and assisting in achievement of both State and national emissions reductions targets and responding to government policies related to combatting the impacts of climate change.

Due to scale of the projects, their significant beneficial contributions to a sustainable energy future and, the extent of the associated investments , it is important that there is certainty in relation to the regulatory environment for WEFs in Victoria. This is particularly relevant for the Moorabool and Stockyard Hill facilities, due to their scale and significance. Further, any regulation must ensure that WEFs remain viable in Victoria.

2. Overview of GWA position on changes to noise Regulation

GWA commends the Victorian Government's efforts to improve noise regulation in relation to WEFs in Victoria through a consultative process managed by DELWP and with support of EPA and Deloitte. GWA is confident that the involvement of the wind industry and community stakeholders in this process will achieve an efficient and effective regulatory package that fairly represents the concerns of the impacted stakeholders in the context of Victoria's planning and environmental protection objectives.

It is understood that the proposed new Regulations are part of a broader update of the EP Act which deals with a range of issues and impacts across a range of industry sectors. GWA considers the new EP Act framework, with the EPA as the regulatory authority, is an appropriate framework for regulating WEF noise, so long as the final form of any proposed obligations is fair and reasonable, and regulatory duplication is avoided.

Notwithstanding this position, GWA is concerned that parts of the proposed Regulations are either not warranted, workable, practical or efficient and believes that modifications to the exposure draft are needed to provide certainty to WEF operators that they can manage noise compliance issues to ensure that WEFs are viable investment opportunities in Victoria and that impacts are acceptable.

GWA is aware that the Clean Energy Council is making a submission in relation to the proposed Regulations. GWA supports the comments of the CEC.

In addition, GWA wishes to bring the following key concerns with the proposed new Regulations to DELWP's attention, and respectfully requests that these matters are addressed in the final package of reforms.

The Appropriateness of the Regulations in relation to wind farm noise

GWA understands that the purpose of the proposed new Regulations is to provide a mechanism under which a WEF can demonstrate compliance with the General Environmental Duty (GED) and the unreasonable noise regime under the EP Act.

GWA also understands that this may be alternatively achieved by making a compliance code, under Part 5.3 of the EP Act, and that this may be a more appropriate means to demonstrate compliance and cater for instances that require the resolution of more complex aspects of noise compliance assessment. It is suggested that there will be instances where guidance based on investigation and/or advice of a noise specialist may be required and a rigid regulation may not provide a practical and effective means for assessing and managing compliance. The proposed new Regulations will set strict new requirements with which all WEF operators, regardless of their compliance history, risk level, location and size, must comply and the alternative approach may be more suitable.

The compliance code would provide WEF operators with a flexible opt-in approach to demonstrating compliance with the GED without setting strict requirements that may not be appropriate for all WEFs. Such an approach is consistent with the model of proportionate, proactive and risk-based duties underpinning the new EP Act, and also avoids the risks of unforeseen consequences of strict regulations disrupting the viability of WEFs.

Compliance with NZS 6808:2010 Acoustics – Wind farm noise, to demonstrate compliance with GED

The identification of the New Zealand Standard NZS 6808 (1998 or 2010, as applicable) (the NZ Standard), as varied by or under a planning permit, as the relevant noise standard is a key element of the proposed new Regulations and is supported due to:

- the New Zealand Standard being recognised as an appropriate measure for assessing and regulating

noise compliance to ensure reasonable protection for human health and environment. It provides a definitive means to assess and measure noise impacts. By referencing the NZ Standard, the regulation avoids uncertainty of more subjective unreasonable noise allegations that were a characteristic of statutory nuisance claims; and

- use of the NZ Standard ensures clarity on what does and does not constitute 'Unreasonable Noise' by enabling identification of departures from requirements of the Standard.

As noted above, one of the primary purposes of the proposed new Regulations is to ensure that WEF meets the GED. The GED requires operators to 'reduce the risk of harm from [WEF] activities to human health and the environment and from pollution or waste, as far as reasonably practicable'.

As a preliminary matter, GWA is not aware of any evidence that sound which complies with the limits set out in the NZ Standard (including inaudible sound) has a physiological effect on the human body. This has been confirmed by the Victorian Department of Health.[1]

Fundamentally, the 1998 NZ Standard was developed following eminent research (edited for the World Health Organisation by Berglund and Lindvall) determining noise limits that are required to protect the majority of people from annoyance and sleep disturbance. The development of the standard was based on 'internationally accepted' sound limits which ensure protection from sleep disturbance.

The 2010 standard, now forming the basis of noise conditions in planning permits, went further by introducing the concept of noise limits for 'high amenity areas' and improving methodologies which can be used to demonstrate compliance with the noise standard.

The methodology and limits in the NZ Standard are considered to be (by consensus view of the Committee and Standards Council that adopted them and numerous experienced acoustics experts) "a reasonable way of protecting health and amenity at nearby noise sensitive locations, without unreasonably restricting development of wind farms."[2]

Respectfully, GWA considers that the GED and unreasonable noise duty are substantially achieved by demonstrating compliance with the NZ Standard, which is itself a scientifically robust, health-based approach which reduces risk 'so far as reasonably practicable'. In that regard, GWA does not consider it is necessary that additional, more onerous, testing and reporting requirements are placed on WEF facilities. It considers that Victorian wind farms can continue to be managed appropriately under the NZ Standard and the approved plans and processes in place for existing WEFs.

Proposed New Regulations not proportionate to risk

GWA considers that some of the obligations to be imposed under the proposed new Regulations are not proportionate to the risk that they are intended to resolve or mitigate.

The EPA has released an industry guidance note dated October 2020 which confirms that "reasonably practicable" as used in the definition of the GED means putting in controls that are *proportionate to risk*.
GWA also notes that section 6 of the EP Act sets out a range of risk based factors that must be considered

[1] 2013 DOH Document, p 19; *Cherry Tree Wind Farm Pty Ltd v Mitchell Shire Council (Red Dot)* [2013] VCAT 1939 at [30].

[2] NZ Standard 2010, pg 7.

when determining what is 'reasonably practicable' including:

(a) the likelihood of those risks eventuating;
(b) the degree of harm that would result if those risks eventuated;
(c) what the person concerned knows, or ought reasonably to know, about the harm or risks of harm and any ways of eliminating or reducing those risks;
(d) the availability and suitability of ways to eliminate or reduce those risks; and
(e) the cost of eliminating or reducing those risks.

Given that the NZ Standard and planning permit conditions imposed on particular wind farms already ensure that risks to human health and the environment are protected, GWA considers that some of the requirements proposed in the Regulations, including ongoing five yearly reporting, are disproportionate to the risk of harm.

While GWA agrees that Victorian communities need to be protected from risks of wind farm noise, the costs and practicability of measures to eliminate or reduce those risks must be considered to ensure that WEF will continue to be viable projects within Victoria and accordingly the Regulation should not unnecessarily restrict operations.

Components of the proposed new Regulations, particularly the mandatory 5 yearly testing, are excessive and costly and, will not be warranted in most cases.

Were instances to arise where there is a reasonable doubt as to whether or not compliance with the NZ Standard was being achieved, the EPA could use its powers to issue investigation notices under part 10.1 of the EP Act.

Regulatory duplication and inconsistency between differing frameworks

Regulatory duplication has been a big concern for WEF operators, and GWA welcomes the passage of legislation which will remove wind turbine noise from the statutory nuisance regime from 1 July 2021.

However, GWA is concerned about the risks of regulatory duplication and/or inconsistency between the EP Act and the planning regime.

In that regard, GWA:

- considers there is a need to ensure that the requirements of existing planning permits issued under the P&E Act are considered and that there are no conflicts or adverse retrospective impacts for established projects that have management plans endorsed by the Planning Minister. The duplication of requirements or inconsistency of requirements under the different Acts must be avoided to ensure efficient and effective noise regulation and remove the risk that a WEF which has spent considerable time and money constructing, testing and operating in accordance with endorsed plans and, will need to spend further time and money to return to the Minister seeking variations to those plans.
  Further, given that WEFs require a planning permit in Victoria, we are concerned that there may be an overlap between the enforcement functions of the EPA under the proposed new regime and the Planning Minister. Again, this overlap may result in different regulators imposing different requirements on WEFs and holding differing views on whether or not the WEF is compliant.

  There is currently no information available concerning the nature or timing of proposed reforms relating to the P&E Act, planning schemes and/or planning permits. Unless further change occurs, a WEF will need to continue to comply with current planning permit requirements and any endorsed

documents under the permit and respond to the Minister for Planning in relation to any non-compliance with those permit conditions as well as comply with the proposed new Regulations (which may be inconsistent with reporting and testing requirements in the planning permit) and then respond to the EPA in relation to any non-compliance with the Regulation.
We consider that any proposed changes to the regime under the P&E Act must be considered together with (and ultimately commence at the same time as) the proposed new Regulations to avoid uncertainty and inconsistency between these two regimes. GWA also would welcome the opportunity to comment on any upcoming planning reforms.

- considers that more must be done to ensure that third-parties are not provided with multiple avenues under which they can commence proceedings in relation to WEF noise. Noting that third party enforcement rights will come into effect under the EP Act on 1 July 2022, GWA considers it appropriate that third party rights be wound back at that time under the planning regime.

Role of Environmental Auditors

The proposed Regulations include a number of obligations which must be completed by environmental auditors appointed under the EP Act. For instance:

- Only an environmental auditor can prepare a report verifying the post-construction noise assessment under regulation 131C; and
- Only an environmental auditor can prepare a report verifying that the proposed 5 yearly noise assessment has been completed.

Under current planning permit conditions, a suitably qualified independent acoustician can undertake these roles with the approval of the Minister. We recommend that the Regulations be amended to continue to allow a suitably qualified independent acoustician to review post-construction noise assessment with the consent of the EPA. This will overcome any issues associated with finding an appointed environmental auditor who has the necessary skills and capacity to complete these requirements.

3. Concern regarding final form of the EP regulation and P&E Act provisions

GWA appreciates the opportunity to comment on the exposure draft of the Regulation and regards the Victorian Government process as consultative and inclusive. However, the time frame allowed and uncertainty of the final form of regulation to be implemented in some 4 months time is of concern.

While GWA has provided comments on specific aspects in the following pages, we recognise there is some potential for variation in the final form of the EP Regulation and a concern is that inconsistencies may arise during finalization of provisions. We would therefore welcome a further short review of the final draft form of the regulation and associated amended legislation to allow for stakeholder alerts, if the final form is indicated as problematic and would not fulfil the objectives of efficient and effective regulation. Any changes to the P&E Act related to the new nosie regulation are unknown and that presents further uncertainty.

4. Comments on specific aspects of the proposed new Regulations

Division 5 – Wind Turbine Noise

Regulation 131B Duties on operators of wind energy facilities

Regulation 131B provides, via a note, that compliance in full with the Regulations will deem an operator of a WEF to be compliant with the GED. Regulation 131G provides that for the purposes of paragraph (b) of the definition of unreasonable noise, wind turbine noise will be unreasonable if it exceeds the noise limits determined in accordance with the relevant noise standard.

However, it is indicated that WEFs may be exposed to unreasonable noise litigation by third parties under the paragraph (a) of the definition of unreasonable noise.

We request that regulation 131B and/or 131G be amended to stipulate that, provided wind turbine noise does not exceed the relevant noise standard, the duty not to cause unreasonable noise will be fulfilled in full. In support of this submission, we note that the NZ Standard has been designed to take into account the volume and duration of noise, the time, place and other circumstances in which it was emitted, how often it is emitted, and its character (eg tonality).

Regulation 131C – Post-construction noise assessment

Proposed regulation 131C relates to post-construction noise assessment and applies to a WEF that commences 'operation' on or after 1 July 2021 (some 4 months' time).

The term 'operation' has not been defined and minds may reasonably differ on its meaning. For instance, it is not clear whether a WEF that has commenced operating for the purpose of commissioning turbine by turbine, but has not yet commenced full operation, would be captured by the requirement. For clarity, it is suggested that: the post construction noise assessment be conducted within 12 months of the completion of commissioning of the last turbine of the WEF.

Additionally, current grid constraints often prevent turbines from progressing from commissioning to operations due to hold-point caps on exports and while turbines may be tested, they may not be able to operate productively. Accordingly, completion of commissioning for a turbine should be defined as achieved when the turbine has undergone commissioning trials and, is permitted by the grid authority to operate on a continuous basis.

131C(1)(b) contemplates staging of projects under provisions of existing Permits. The staged Moorabool WEF is required to perform compliance testing within the 14 months following commissioning of the last turbine. This appears to achieve a similar result to that indicated for the new regulation (if it were applied).

It is noted that WEFs that already hold permits and are well advanced, but have not yet been commissioned, already have plans in place for post construction noise testing and GWA considers it unreasonable for new requirements to be overlaid on them, on extremely short notice, and potentially introducing inconsistencies between requirements of different regulatory jurisdictions. The new Regulations should not introduce inconsistencies and it is important the P&E and EP Acts are consistent in noise management provisions and that they do not add new restrictive provisions. Ideally, requirements of the P&E and EP Acts should be aligned at time of commencement of the EP Regulation from 1 July 2021.

GWA also consider that the proposed timeframe of '10 business days' to lodge a report (actually two reports) under regulation 131C(4) should either be:

- removed
- limited to 'final reports' (noting that the auditor's report follows the post-construction noise assessment and that simultaneous lodgement of the two reports would be more appropriate) or
- extended (perhaps up to 20 business days) or
- should be able to be extended with approval from the EPA, to allow for realistic scenarios where the WEF may need time to consider and understand the report.

We query the practicability of the 10 day requirement when an audit is required, and prefer a deadline which falls a certain period after commissioning for both the principal report and the accompanying audit.

Regulation 131D, Clause(2)(a) – Noise management plan

The current wording of 131D (2)(a) requires that: "*A noise management plan for a wind energy facility must include procedures for –(a) the identification, assessment and control of risks of harm to human health and the environment from wind turbine noise at the wind energy facility;"*

As a general comment, it is noted that existing planning permits (including those with application to assets operated by GWA) have requirements for the preparation and endorsements of similar plans, many of which may have already been prepared in consultation with DELWP. The proposed new Regulations should not result in duplicate plans being required to be prepared with potentially inconsistent requirements imposed by different regulators.

An illustrative example is the overlap between the EP Act noise management plan and existing noise compliance test plans and community complaints plans under standard WEF planning permit conditions. GWA expects that any such duplication will be removed upon the commencement of the new EP Act.

Further, clause (2)(a) may be asserted by a third party to require a WEF operator to assess, afresh, what presents a risk of harm to human health and the environment. Again, this is inappropriate because, as outlined above, the NZ Standard has been developed particularly to avoid, to a reasonable degree, any risk to human health from wind farm noise at sensitive locations. It is not necessary to require each wind farm operator to rework the details of what can reasonably be done to manage risks of harm to human health and the environment as that has already been researched at length and resulted in the comprehensive NZ Standard.

It is respectfully suggested that **Regulation 131D(2)(a)** is either:

- deleted, or
- is reworded to be specific for the application of the NZ Standard

Regulation 131D, Clause (5) – Noise management plan

Regulation 131D (5) currently states that: '*The Authority may require the operator to make **any** amendments to the noise management plan'*. This inclusion raises considerable uncertainty for the wind energy facility operator and, is not necessarily outcomes focussed.

The WEF operator is best placed to determine any remedial measures for the WEF and to make sure the WEF complies with the relevant noise standard while still being commercially viable. The EPA may not have an in-

depth understanding of the operations of a particular WEF, particularly where it has not been the entity responsible for assessing and approving the WEF under the planning regime .

This clause should be amended so that:

- the EPA's power to require changes to the noise management plan are limited to those changes which are reasonably necessary to ensure the noise management plan complies with the Regulation or the applicable Noise Standard; and
- the EPA cannot require any such changes until the EPA has considered any submissions made by the WEF in relation to the proposed amendment..

There should also be a mechanism permitting the WEF to seek review of the EPA's requirement for amendment to the noise management plan.

Regulation 131E, Clause (e) – Annual Statement

The requirement for an Annual Statement is generally acceptable, but includes item (e) requiring '*evidence demonstrating the wind energy facility has not contravened the relevant noise standard*'**.**

GWA is concerned that item (e) imposes a positive obligation on WEF operators to provide compliance without specifying the nature of the evidence required to demonstrate compliance.

GWA is concerned in particular that third parties could, relying on third party enforcement mechanisms, assert that a WEF operator is required to undertake continuous noise monitoring. We note that DELWP's subjective intention as to the operation of sub-regulation (e) will not aid a WEF who is faced with such an assertion: the court will need to consider what, objectively, the drafting requires.

Ongoing compliance testing is not warranted where a WEF has previously demonstrated compliance under current post-construction reporting requirements, where no credible complaints have been received during the period covered by the Annual Statement and where neither the regulator nor the proponent has reason to believe the wind energy facility is non-compliant. Any requirement for ongoing testing would be likely to significantly increase the cost associated with the WEF and is a significant imposition.

GWA considers it would be more appropriate for the EPA to use its powers to issue a notices under Part 10.1 of the EP Act (including notices to investigate) where there may be concerns that a particular WEF may not be compliant.

It is respectfully suggested that 131E is modified to delete item (e).

Regulation 131F – Wind Turbine Noise Assessments

As a general statement, Section 131F appears to introduce additional noise testing that is not required under the NZ Standard nor is it required in planning permits issued in Victoria or any other jurisdiction we are aware of.

It is important to note that while the NZ Standard stipulates a minimum of 10 days of testing data, but in practice much more data is collected over a longer period to ensure the veracity of any post-construction noise compliance test and four weeks or more of continuous monitoring can be required for noise compliance testing.

An important element of the transition to clean renewable energy is to ensure affordable supply and requiring additional unnecessary testing is inconsistent with that objective. Placing significant obligations on the Victorian

wind industry that are not warrantedhas the risk of making current and future wind projects unavailable. It is not cost effective and not proportionate to any risk.

Not all wind farms in the state are at the same risk of exceeding the relevant noise standard, The proposed additional testing appears to be required for all WEF notwithstanding a WEF may not have any allegations or concerns regarding non-compliance.

GWA's position is that any requirement for 5 yearly testing must be deleted. Additional testing should be on a needs-only basis, where circumstances suggest that further testing is warranted. Such circumstances may involve instances of multiple credible complaints that are assessed by a specialist as warranting investigation and may incorporate only targeted monitoring without a need for a full NZ Standard style test.

Outcomes of targeted monitoring would the determine the need for and extent of any further investigation. The investigation process could be outlined in the Noise Management Plan and, be applied if and when required, rather than by a mandatory 5 year test regime.

5. Conclusion

Overall the existing provisions that require post-construction noise assessment, noise management plan and complaints management plan together with annual statements, all under a framework that has wind farm compliance with the NZ Standard at its core are regarded as as an appropriate basis for noise regulation subject consideration of above concerns for aspects of the exposure draft regulation. While a revised regulation may serve the purpose, there may still be a benefit for EPA to consider issue of a compliance code or guidelines for certain aspects regulating noise and/or demonstrating compliance with the GED.

Should there be any questions on the matters above, please don’t hesitate to contact me as per the details below.

Sincerely,

Jeff Bembrick
Development Compliance Manager
Goldwind Australia Pty Ltd