

24 January 2024

The Hon. Penny Sharpe MP  
Minister for Energy  
NSW Government  
Submit online via the [NSW Planning Portal](#)

Dear Minister,

### **Response to the NSW Government's Draft Energy Policy Framework**

The Clean Energy Investor Group (CEIG) welcomes the opportunity to provide feedback on the NSW Department of Planning, Housing and Infrastructure (DPHI) Draft Energy Policy Framework and the suite of supporting guidelines including the Wind and Solar Energy Guidelines, Transmission Guideline, Benefit Sharing Guideline and Private Agreement Guideline (Draft Guidelines) published in November 2023.

CEIG represents domestic and global renewable energy developers and investors, with more than 16GW of installed renewable energy capacity across more than 76 power stations and a combined portfolio value of around \$38 billion. CEIG members' project pipeline is estimated to be more than 46GW across Australia. CEIG strongly advocates for an efficient transition to clean energy with a focus on the stakeholders who can provide the cost-effective capital required for this transition.

#### **Key Points**

##### General comments

- Rectifying the current planning system in NSW is key to reaching the State's target of 70% emission reductions by 2035, however CEIG finds that **the draft Energy Policy Framework conflicts with NSW's ability to deliver the energy transition.**
- CEIG finds that the **Draft Guidelines lack an expedited assessment process for clean energy and transmission projects, reduced costs and increased certainty for investors** that NSW needs.
- **CEIG is concerned that the Draft Guidelines may hinder development of clean energy projects in NSW** by causing uncertainty for investors and potentially diverting investment away from the State.
- CEIG and HSF conducted a **review of NSW statutory planning approvals processes** (see Attachment 1).

##### Wind and Solar Energy Guidelines

- CEIG contends that the proposed method outlined in the Draft Wind Energy Guideline is **slower, lacks clarity, overemphasises impacts, and does not align with national**

#### **and international guidelines.**

- To fast-track major clean energy projects, CEIG recommends that NSW **leverage CSSI declarations, streamline DA assessments and strategically address impacts within REZs.**
- CEIG also recommends **expanding the use of CSSI declarations by lowering the threshold below 750MW** to allow a wider range of projects to access a more efficient approval process.
- CEIG notes the verbal advice from DPHI that the soft lodgment can be opted out of.
  - Additional transparency and clarity around the assessment process undertaken by DPHI would be strongly welcomed by CEIG, including introducing a set period for the DPHI to make a decision on a project.
  - CEIG suggestions are aligned to the Commonwealth government's proposal for reforms to the EPBC Act 1999.
- CEIG is concerned that **guidelines may hinder wind and solar development by codifying dwelling entitlements.**
- CEIG believes the assessment requirements for visual impacts **exaggerate the visual impact of wind turbines on dwellings, lack clarity on the weight assigned to these impacts and offer inadequate guidelines for addressing moderate visual impacts,** and more flexibility is needed based on the level of risk involved.
- CEIG cautions that with more assessments to be undertaken, there is **risk of extending approval times which could affect project schedules.**

#### Transmission Guideline

- CEIG stresses the **need for streamlined approval processes** for transmission projects, particularly those directly linked to REZs.
- CEIG supports the determination that the **benefits of undergrounding transmission are largely outweighed by environmental impacts, land use conflicts and financial costs.**

#### Private Agreement Guideline

- Whilst CEIG supports-in-principle the definition of mutual expectations between developers and neighbours, CEIG is **concerned about the introduction of a new legal document in the form of a Private Agreement Guideline** to achieve this outcome.
- CEIG is concerned that the Model Clause Template could **set expectations with landowners and jeopardise investor certainty,** noting the absence of industry input before its release.
- CEIG is concerned that the Private Agreement Guideline may **preserve the right to object development.**

#### Benefit Agreement Guideline

- CEIG believes that the Draft Benefit Sharing Guideline **sets unreasonable expectations for the community and does not improve the process of obtaining social licence.**
- CEIG believes that high government-mandated fees **significantly limit developers' flexibility to implement their own initiatives and obtain genuine, local social licence.**

- CEIG asks that the NSW Government **ensures transparency in the allocation of government-mandated fees, avoiding duplication of fees and offering clear guidance on fee use, contributors and parties responsible for fee management.**

## CONTEXT

The timely completion of large-scale renewable energy and transmission projects is pivotal to reaching 70% emission reductions by 2035 in NSW. Achieving this goal involves a coordinated approach, combining diverse clean energy projects, and meeting short-term targets of at least 12 GW of renewable energy generation and 2 GW of long-duration storage by 2030<sup>1</sup>. The realisation of these objectives relies significantly on efficient, comprehensive, and transparent statutory planning assessment and approval procedures in NSW without unwarranted delays.

The current planning system in NSW faces significant challenges. Over the past five [October 2018 to December 2023] years, the NSW DPHI (then DPE) has only approved two new wind projects<sup>2</sup>. The approvals process in NSW takes 2-3 times longer than in other states, prolonging project timelines by 4-7 years and increasing developer application costs by 25 times in contrast to Queensland, as shown in Table 1. These hurdles and delays in the NSW planning landscape create exceptional complexity and difficulty in securing projects, ultimately impacting consumers.

CEIG has observed that with the current assessment and approval process for windfarms that assessing changes to existing development approvals can be just as complex and time-consuming as the initial assessment process. This is also true when proposed changes are minor and the modification aims to enhance environmental and social outcomes.

Ensuring the efficient operation of the NSW planning system has become increasingly vital to swiftly and effectively deploy energy generation and transmission infrastructure while providing assurance to both investors and the community. Any delays in planning, access rights, transmission, connections, or investments might force NSW to incur significant costs to extend the planned closure of the 2.88GW Eraring coal-fired power generator in August 2025.

### **CEIG and HSF - Review of NSW statutory planning approvals processes**

CEIG and Herbert Smith Freehills (HSF) have conducted a review of the statutory planning approvals processes for major clean energy projects in NSW and have released *Delivering major clean energy projects in NSW - Review of NSW statutory planning approvals processes*, (the HSF Review) (see Attachment 1). The HSF Review focuses on state-significant planning pathways, the assessment of biodiversity, cultural heritage, visual, noise and vibration impacts, and land and transmission aspects of delivering major clean energy projects. This submission leverages important recommendations from this Review.

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<sup>1</sup> NSW Department of Planning, Industry and Environment (Nov-20) [NSW Electricity Infrastructure Roadmap](#)

<sup>2</sup> NSW Government [Major Projects Planning Portal](#)

CEIG acknowledges the NSW government's efforts in recognising the necessity to improve the planning system and address concerns raised by industry and communities by standardising the assessment of crucial matters and offering clearer guidelines. Yet, CEIG finds that the Draft Guidelines lack the expedited assessment process for clean energy and transmission projects, reduced costs and increased certainty for investors that NSW needs. Throughout the Draft Guidelines, there is an unbalance in language concerning acceptable local impacts and the need to achieve NSW's energy targets. The inconsistencies in wording and references within the Draft Guidelines are problematic and may create challenges in their interpretation and implementation.

CEIG is concerned about the implications of the Draft Guidelines on clean energy projects in NSW. Amid the urgency to expedite regulatory processes, these new proposed Guidelines send conflicting messages to the industry and will complicate the development of new projects. The increased uncertainty for investors posed by these Draft Guidelines might discourage investment in NSW, potentially diverting investor attention to other States or international markets.

CEIG understands that the Draft Guidelines may already be enforced on projects that are currently in the NSW planning system, before the consultation process is complete and final Guidelines are issued. CEIG is deeply concerned that this practice may be occurring and strongly suggests that the NSW government should clarify that the draft Guidelines should not be applied for current planning applications.

**Table 1: Planning approval timeline and cost, by Australian jurisdiction**

<b>State</b>	<b>Planning approval timeline</b>	<b>Planning application costs</b>	<b>Notes</b>
NSW	5-8 years	\$1.0 M - \$1.5 M	Fees scale up by project size: a 1.5 GW project costs around \$4.5 M for the application fee
Victoria	3-5 Years	\$50 K - \$100 K	In addition, all projects in Victoria go to Panel (\$80 K processing fee), cost approx. \$500 K for panel preparation
Queensland	1-2 years	\$30 K - \$40 K	

South Australia	1-3 years	\$300 K - \$500 K	In addition, a state significant project approx. \$50K application fee Permit process \$250-\$500K
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\*For wind farms, concerns over bird and bats often result in significant planning delays.

Source: Various State planning websites

## **WIND & SOLAR ENERGY GUIDELINES**

CEIG contends that the proposed methodology outlined in the Draft Wind Energy Guideline and Large-scale Solar Energy Guideline is slower, lacks clarity, overemphasises impacts, and does not align with national and international guidelines.

### **Suitable sites for wind projects**

Wind farms, both within and beyond Renewable Energy Zones (REZs), are required to fulfill energy demands and fill the gap left by planned coal plant closures by 2030. Due to the proximity of industrial and specialised zones to regional cities, rural areas are the sole viable locations that can accommodate these wind farms while adhering to regulations regarding inhabited houses.

CEIG acknowledges that since the release of the original documents, the government has clarified which sites are listed as suitable for wind and solar development. Although it has been stated that the map of suitable areas for wind energy development will not preclude project development, CEIG believes this perspective overlooks the potential impacts. There is a need for further clarification on how the DPHI will evaluate wind projects and how these new Guidelines might influence projects already awaiting decision.

CEIG proposes that the development map as it is presented could be removed. Its crude assessment methodology for site suitability renders it unhelpful for developers and potentially misleading for individuals lacking development experience.

### **State significant infrastructure**

CEIG is in support of the proposed Minister for Planning's authority to label wind energy developments of 750MW or more as critical state significant infrastructure (CSSI). Yet, CEIG also perceives a broader scope for employing CSSI declarations, potentially offering further opportunities.

Lowering this threshold would enable a broader spectrum of projects, including those below 750MW, to benefit from a more streamlined approval process. These projects are crucial to maximise the use of available capacity in the existing transmission and distribution networks.

Facilitating the construction of an electrification project holds national significance regardless of ownership. All projects, regardless of scale or ownership structure, will

contribute to NSW's emission reductions goals.

Historically, most wind and solar projects in NSW have been categorised as State Significant Developments (SSD), falling under Part 4 of the Environmental Assessment Act<sup>3</sup>. This classification, while comprehensive, offers less flexibility to modify projects and typically involves longer processing times. Additionally, SSDs are amenable to merits appeals, which can include a complete review of the project's merits, even after a prolonged planning process of up to four years.

In contrast, CSSI projects, where the Minister is the approval authority rather than the Independent Planning Commission (IPC), provide a more direct path for project development whilst retaining robust approval processes. These projects are not subject to merits appeals and only allow for limited judicial review. The Minister has the capability to classify specific projects, or a class or category of projects, as CSSI without the need for legislative change. This classification focuses more on the conditions under which a project is approved, rather than whether it should be approved.

Additionally, the prospect of designating an entire REZ as CSSI could further accelerate planning approvals for individual projects within these zones. This approach could significantly reduce the project completion timeline, thereby enhancing the efficiency and impact of REZs in meeting clean energy goals.

In light of this, CEIG advocates for an expanded application of the State Significant Infrastructure (SSI) and CSSI classifications to include a broader range of projects, not limited to those exceeding 750MW.

### **Treating a REZ as a single power station**

The idea of treating REZs as a single power station holds significant potential to fundamentally change planning and development processes.

By viewing a REZ as a unified entity, akin to a power station, it naturally leads to a more streamlined and coordinated deployment of resources and infrastructure within the zone which facilitates the efficient development of clean energy projects and accelerates their completion.

It can also substantially mitigate risks by offering a more comprehensive:

- understanding of the impacts on grid stability and network requirements;
- assessment of landscape issues at a holistic level, including Commonwealth government environmental approvals, and
- enable a future 'Plug and Play' planning framework.

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<sup>3</sup> NSW Government [Environmental Planning and Assessment Act 1979 No 203](#)

## **Distance from dwellings**

### Minimising unreasonable impacts from potential dwellings

CEIG recognises that the Draft Guidelines codify dwelling entitlements, that is, houses having the right to utilise farming land, requiring only a building permit and not subject to Council interference. CEIG also notes that this is currently a legislative requirement in NSW<sup>4</sup>.

However, the new regulation requiring a 2km setback from any building on adjacent properties, including those with a simple building plan, provides an avenue for opponents to halt proposed wind projects. This means an objector on a neighboring property to a wind project could easily and cheaply apply for a building certificate for a proposed dwelling which, even if it did not result in any construction, would cause a 2km setback. Effectively, through the proposed Guidelines, a hypothetical house granted a building permit could potentially hinder the development of multiple turbines. This is an unprecedented approach, unlike that of other jurisdictions, and it is not clear that it would ultimately lead to net benefits for consumers.

In other States, similar attempts by opponents have been met with legal action, leading to precedents and case law defining what qualifies as an existing dwelling. For instance, in Victoria, the Cherry Tree Wind Farm VCAT decision considered the amenity rights of a landowner who built a foundation near the project<sup>5</sup>. The Panel explicitly ruled that this construction did not constitute an existing dwelling.

CEIG proposes three solutions:

- (preferred) Provide a clear and reasonable methodology for assessing impacts relating to dwelling entitlements and ensure that dwelling entitlements are not used to inhibit the delivery of clean energy projects, particularly wind.
- The affected landholder should be able to request that a condition be included as part of the planning approval that the project proponent acquires their land at market value. This approach has been previously implemented in planning approvals within the mining sector.
- Alternatively, should the NSW government wish to retain the dwelling entitlement clause, the government could clarify that only a minimal weight will be assigned to assessing dwelling entitlements in the Guidelines, signaling limited utilisation in the planning evaluation process.

### Potential vs existing dwellings

Clarification should be given to the level of importance assigned to potential dwellings compared to existing ones. For instance, in Victoria, where no assessment of dwelling entitlements occurs, Cherry Tree Wind Farm received evidence indicating that as a particular building was not used as a dwelling, it would not be considered as part of the assessment process. Eliminating this consideration entirely from legislation could prove challenging, thus

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<sup>4</sup> NSW Government [State Environmental Planning Policy \(Transport and Infrastructure\) 2021](#)

<sup>5</sup> AustLII (Apr-13) [Cherry Tree Wind Farm Pty Ltd v Mitchell Shire Council](#)

our proposal that the proponent could demand acquisition of the land as a resolution.

The consideration of existing dwellings and the allowable timeframe for lodging building certificates or planning approvals is also significant. In NSW, both approved and not yet approved dwellings carry weight in evaluating the proposed impacts of the project. The specific mention in the Draft Technical Supplement for Landscape and Visual Impact Assessment, which explicitly states the need to consider dwelling entitlements, brings significant attention to this matter, which was not previously widely recognised. CEIG is concerned that parties with various agendas reactively securing dwelling entitlements could soon curtail wind project development in NSW.

### Removal of turbines

To resolve dwelling entitlement issues, the DPHI (then DPE) has resorted to requiring that wind turbines be struck out of the project.

The DPHI should note that not all turbines in a project are equally productive; some yield higher outputs than others. Consequently, the blanket removal of a set number of turbines to address dwelling entitlement issues might render the project financially unviable for proponents.

### **Streamlining development application (DA) including soft lodgement deadlines**

CEIG acknowledges the recent verbal advice from DPHI indicating that soft lodgement deadlines are no longer mandatory, offering projects the option to opt out. Whilst this is welcome, clear timelines for how the DPHI will process applications remain necessary to avoid multiple requests for information and reduce delays once documents are lodged.

CEIG remains concerned that there is a lack of industry awareness regarding this change, highlighting the necessity for improved communication. CEIG recommends that the DPHI clarifies the lodgement process to increase transparency and reduce potential delays.

Additional transparency and clarity around the assessment process undertaken by DPHI would be strongly welcomed by CEIG so that:

- processes are clearly documented around what documents are required, in what format, of what quality standard and in what timeframes;
- a set period for the DPHI to make a decision on a project is introduced.
  - CEIG notes there may need to be 'stop the clock' provisions where additional information needs to be provided. However this process should also be clearly documented, be reasonable, and able to be enforced and scrutinised.
- and publicly available for the public to scrutinise.

Those provisions are aligned to the Commonwealth government's proposal for reforms to the *Environmental Protection and Biodiversity Conservation Act 1999*.

### **Requests for information (RFIs)**

CEIG notes that the Draft Guidelines have not addressed RFIs, yet we strongly advocate for a more comprehensive assessment by DPHI regarding their notably broad use of RFIs. CEIG recognises the need to address the highly burdensome and ongoing RFIs, which contribute to the complexity of Environmental Impact Statements (EIS). The extensive length of EIS documents inherently poses challenges to community engagement. Industry has brought attention to this matter, citing delays in the planning process due to both formal and verbal RFIs, resulting in concerns arising years after lodgement.

As part of the ongoing review, CEIG advises the DPHI to take the opportunity to address issues such as minimising soft lodgement, imposing limits on the number of RFIs and establishing explicit targets for assessment timeframes.

CEIG suggests that DPHI internally establish consistent criteria for RFI triggers, define the boundaries of RFI requests and set limits on the number of RFIs per project assessment. This review's findings should be open to industry feedback.

Although the DPHI has committed to ceasing verbal RFIs, there is a need for written assurance within the Guidelines, as CEIG members have voiced that they continue to experience this process occurring. To streamline the RFI process, CEIG suggests establishing a clear timeline for queries from the Department.

### **Requirements for soils, agricultural and visual impacts**

CEIG has reviewed the proposed Guidelines for soils, agricultural, and visual impacts and is concerned by their potential to impose substantial costs on projects, disproportionate to their actual risk or impact.

CEIG supports the establishment of clear and upfront expectations for landscape and visual impact assessment (LVIA), viewing this approach as beneficial in empowering proponents and streamlining the assessment process. Although CEIG acknowledges that the proposed LVIA may reduce subjectivity and limit specialist interpretation, as is the intention of the LVIA, CEIG strongly cautions that adopting such a uniform approach could burden projects with unnecessary financial strains during both development and assessment, even in cases of low impact or risk.

The suggested evaluation method also appears inconsistent with how visual impacts are assessed for other development types in NSW. CEIG is concerned that the new visual guidelines may exaggerate the visual impact of wind turbines on private dwellings, requiring a considerable amount of fieldwork and analysis that seems disproportionate to the actual impact scale.

CEIG recognises that, in a limited number of instances, the visual grid rating system may result in slightly reduced timeframes for projects with numerous unassociated neighbours compared to the existing assessment process. However, in cases involving neighbouring

properties, CEIG is concerned that the proposed methodology could potentially exaggerate the visual impact on private dwellings.

Outlined below is a summary of our concerns regarding the proposed new quantitative visual grid rating system in the Draft Guidelines:

- The Guidelines will not enhance clarity on impacts or streamline the assessment process for the NSW DPHI.
- The proposed method is dependent on a quantitative approach that could exaggerate wind turbines' and solar panels' visual impact on private dwellings, inconsistent with assessment standards for other types of development in NSW.
- While national and international Landscape Character and Visual Impact Guidelines are referenced, the proposed methodology seems to deviate from the core principles of these Guidelines.

The Guidelines' language around addressing views from regional cities and impacts from wind turbines requires adjustment to acknowledge that wind farms necessitate proximity to some built infrastructure, particularly powerlines. The Guidelines require further clarity regarding the weighting attributed to visual impacts and dwelling entitlements.

In Section 3.2, Table 3, CEIG has a specific concern regarding its clarity and deviation from the 2016 guidelines, particularly in its perceived allowance for multiple Primary viewpoints. CEIG suggests the identification of a single primary viewpoint for each dwelling, to be established through consultation involving the owner, the proponent, and a visual impact specialist.

The visual impacts assessed in Figure 7 of the Technical Supplement have notably expanded compared to the previous visual guidelines. The updated assessment boundaries (marked by red and blue lines) now considerably exceed the prior guidelines for visual impact evaluation. This extended assessment range is likely to substantially increase the number of viewpoints requiring evaluation. CEIG suggests consolidating the previous and new viewpoint setback distances into a singular line and establishing it based on the angle at which a turbine's relative height drops below 3 degrees above the horizontal from the viewer's perspective. CEIG also recommends defining the study area using the same criteria. Additionally, CEIG proposes aligning this modification with Section 4.2, wherein Figure 12 discusses the turbines to be disregarded. Turbines should be excluded if they represent less than a 3-degree height in the field of view.

CEIG has undertaken an analysis, contrasting the Draft Wind Guidelines and transmission visual assessments with the current guidelines in NSW. As previously mentioned, the existing guidelines stipulate the necessity for a detailed visual assessment of wind turbines when a turbine occupies more than 3 degrees in height in the landscape from a sensitive receiver. The Draft Guidelines propose a change to this requirement to 2 degrees, meaning that turbines must be positioned 50% further away from receivers compared to the current

guidelines. CEIG notes that in the Draft Guidelines the requirements for transmission towers remain unchanged at 3 degrees in horizontal height.

Setbacks establish the minimum distances from visually sensitive receivers. According to the draft Guidelines, these setbacks would approximate 375 meters for a tall transmission tower (80 meters in height) and 2.45 kilometers for a 300-meter-high wind turbine (to the top blade). Expressed in degrees, this equates to a 12-degree vertical height for transmission towers and 7 degrees for wind turbines.

CEIG is seeking further information on the rationale behind considering transmission towers more visually favourable compared to wind turbines. CEIG urges that minimum visual setbacks maintain consistency between wind turbines and transmission towers, advocating for both to be set at 12 degrees. Additionally, CEIG asks that the new Guidelines adhere to the non-assessment principle of 3 degrees, aligning with the current guidelines and maintaining consistency with the new Guidelines for transmission towers.

In addition, the outcomes in Section 3.2, Table 8 lack clarity. A clear pathway is necessary, beyond an impact agreement, to address moderate impacts where feasible. CEIG recommends the inclusion of a permit condition within the consent conditions for dwellings that exhibit a moderate visual impact, including:

1. For a period of 5 years from the commencement of construction, the owner of any non-associated residence with a moderate visual impact (as determined in the EIS) may ask the Applicant to implement visual impact mitigation measures on their land to minimise the visual impacts of the development on their residence (including its curtilage).

Upon receiving such a written request from the owner of these residences, the Applicant must implement appropriate mitigation measures (such as landscaping and vegetation screening) in consultation with the owner.

These mitigation measures must be reasonable and feasible, aimed at reducing the visibility of the wind turbines from the residence and its curtilage, and commensurate with the level of visual impact on the residence. Where mitigation was presented as part of the EIS, the mitigation must be generally in accordance with what was proposed in the EIS.

All mitigation measures must be implemented within 12 months of receiving the written request, unless the Secretary agrees otherwise.

If the Applicant and the owner cannot agree on the measures to be implemented, or there is a dispute about the implementation of these measures, or the owner requests it, then the Applicant must pay an amount of \$80,000 to the owner of the residence and enter into a settlement agreement. If this money is paid, this condition is deemed

to have been met by the Applicant and no further claims can be made for this dwelling under this condition.

2. Prior to the commencement of construction, the Applicant must notify the relevant owners of the residences referred to in Condition 1 above, that they have the right to request the Applicant to implement visual impact mitigation measures at their residence (including its curtilage) at any time within 5 years of the commencement of construction, or pay \$80,000.
3. Once the appropriate mitigation has been agreed, the Applicant may enter into an agreement with the owner of any residence to cover the cost of or supply planting and landscaping material, if the residents intend to undertake the implementation of the mitigation planting themselves.
4. The Applicant is responsible for maintaining any vegetation screening established under Condition 1 and 2 for a period of 6 months following implementation to ensure it is established.

CEIG believes that impact agreements represent a practical method for addressing project impacts. It is unreasonable to restrict these agreements solely to instances when all alternative solutions have been exhausted. Thus, CEIG proposes the removal of the phrase "when all other options have been exhausted" from the Impact Agreement section following Table 8. This modification would enable proponents and neighbours to enter into private agreements that reasonably address concerns for all involved parties. For instance, a neighbour might prefer a monetary settlement instead of other mitigation measures, and a private agreement should have the flexibility to accommodate such preferences.

With more assessments to be undertaken, there is a risk of extending approval times that could affect project schedules<sup>6</sup>. This uncertainty might deter stakeholders, increase costs, and introduce complexities in meeting contractual obligations, potentially deterring investors. Considering the significance of these projects, CEIG suggests that assessments be based on the level of risk involved instead. Additionally, the Guidelines should explicitly outline that the assessment's goal is to minimise visual impact while meeting key objectives concerning public benefit and transitioning to a renewable economy, in line with government commitments.

### **Requirements for noise assessment**

The Draft Noise Assessment Technical Supplement's final page asserts that an "LA90,10min (equal to 37 dB), is an appropriate maximum level of noise to which residents should be exposed". This statement might be misconstrued by the community, implying that exceeding 37 dB should not occur, preventing private agreements to set a limit above this level for a

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<sup>6</sup> CEIG (Sept-23) [Response to the proposed updates to State code 23: Wind farm development and the associated planning guidance](#)

specific receiver. This inclusion also conflicts with the intent for the private agreements to extend the 35 dB(A) limit. CEIG does not believe that 37 dB should serve as an absolute limit for private agreements, however, while indicating that no person should be exposed to this noise level, the statement could inadvertently convey a strict limit. CEIG suggests excluding health-related comments from the Guidelines, as these are not the intended focus of a technical planning note.

In addition, both the Draft Noise Assessment Technical Supplement and Section 5.2 of the Draft Wind Energy Guideline reference a penalty for tonality if deemed excessive. However, neither document specifies whether the threshold is based on more than 10% of measurement time (1 week), a day or anticipated operating conditions. CEIG asks that this necessary clarification be provided.

### **Biodiversity**

Biodiversity concerns are also causing substantial delays under both SSD and SSI classifications and have not been considered in the Draft Guidelines. The *NSW Biodiversity and Conservation Act 2016* (BC Act) was designed for singular small-scale projects, rendering it unsuitable for large-scale projects such as wind farms that involve land clearing.

CEIG proposes that NSW consider permitting project submissions based on 12 months of surveys, allowing for additional surveys to be submitted upon completion. NSW is the only state that requires over 12 months of survey before project submission, thereby extending the development timeline by a year.

Addressing the BC Act is vital due to the impediments and financial strains it imposes on renewable energy projects. However, CEIG recognises that revising the BC Act will be a lengthy process and emphasises the necessity for interim solutions during this review period.

The HSF Review has identified short-term opportunities for biodiversity and cultural heritage, two areas which have not yet been addressed in the Draft Guidelines.

With regards to biodiversity, our recommendations include:

- improve clarity regarding the applicability of the Draft Guidelines;
- align land clearing standards across the State; and
- improve landscape-scale biodiversity assessments.

Concerning cultural heritage, short-term opportunities involve:

- establish a robust consultation framework with defined timelines; and
- assess connection to Country.

For further insights into our Review findings, please refer to Attachment 1.

### **Need for project approvals that phase out Earing**

There are a number of key wind energy projects currently awaiting final planning determination, including 3 wind farms in NSW: Burrendong Wind Farm, Bowmans Creek Wind Farm, and Hills of Gold Wind Farm<sup>7</sup>.

These projects have completed all the required assessments and satisfied all the requirements by the NSW DPHI and are now simply waiting approval. Put together (and including the Yanco Delta Wind Farm approved in December 2023), these projects would more than meet the capacity requirement identified by AEMO's Electricity Statement of Opportunities (ESOO)<sup>8</sup>. CEIG urges the DPHI to prioritise supporting the existing pipeline of wind energy projects and expediting the completion of their approval process, while aiming to mitigate the considerable delays in approval times.

### **TRANSMISSION GUIDELINE**

The Draft Transmission Guideline emphasises the importance of a route selection that balances technical, environmental, and social factors. For renewable energy projects, this means that transmission lines are planned in a way that minimises environmental impacts and respects community concerns, while ensuring critical infrastructure is deployed to support the transition.

CEIG stresses the need for streamlined approval processes for transmission projects, particularly those directly linked to REZs. Speeding up regulatory approvals can significantly accelerate the deployment of transmission infrastructure, which is essential for connecting and integrating renewable energy sources into the grid.

Additionally, CEIG recommends a heightened focus on developing and expanding REZs. By prioritising transmission projects that enhance the capacity and connectivity of these zones, the Transmission Guideline can more effectively support the expansion of renewable energy projects, which is fundamental for achieving 70% emission reductions in NSW's by 2035.

While the Transmission Guideline acknowledges the importance of REZs, a more focused approach on facilitating transmission infrastructure specifically in these zones would be beneficial. This could include prioritising transmission projects that connect to or expand the capacity of REZs.

In addition, CEIG supports the determination of the Draft Transmission Guideline that while undergrounding transmission lines can help to avoid and mitigate some impacts of a project, particularly visual impacts, the benefits are largely outweighed by other environmental impacts, land use conflicts and financial costs as noted in the Parliamentary inquiry into the

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<sup>7</sup> NSW Government [Major Projects Planning Portal](#)

<sup>8</sup> AEMO (Aug-23) [2023 Electricity Statement of Opportunities](#)

feasibility of undergrounding transmission infrastructure<sup>910</sup>.

Lastly, CEIG supports the initiation of a compulsory acquisition process in instances where a voluntary agreement cannot be reached to maintain the progression of transmission projects and prevent delays.

### **Additional information**

The HSF Review has identified short-term opportunities for land and transmission matters, including:

- strengthen social licences with local communities and landholders;
- develop strategic approaches for securing land and routes in a REZ and NSW more broadly; and
- address industry feedback on the draft private agreement template.

For further insights into our review findings, please refer to Attachment 1.

### **PRIVATE AGREEMENT GUIDELINE**

CEIG and its members were not informed about the development of a policy to regulate agreements between host landowners and neighbours. The absence of industry consultation for legal and commercial input prior to its release poses risks by setting expectations prior to industry review.

#### **Rationale behind the Private Agreement Guideline**

Whilst CEIG supports-in-principle the definition of mutual expectations between developers and neighbours, CEIG is concerned about the introduction of a new legal document in the form of the Private Agreement Guideline to achieve this outcome.

CEIG understands this would be the first instance where the government provides an industry-specific guideline for contracting with landowners, and seeks more clarity from the NSW DPHI on the purpose and rationale for this Guideline. CEIG believes that this should revert to principles exclusively, with no provision of a legal document provided by the State.

CEIG also notes the new obligation for applicants to provide copies of all impact agreements to the DPHI and ensure the ongoing validity of these agreements throughout the project's duration, a requirement that has not been previously mandated.

Further guidance is also needed regarding the implications of these Private Agreement Guideline on ongoing landowner negotiations. Landowner negotiations are typically protracted, spanning several months. Should the Private Agreement Guideline be enforced

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<sup>9</sup> Clean Energy Investor Group (Nov-23) [Response to the Parliamentary Inquiry into the Feasibility of Undergrounding the Transmission Infrastructure for Renewable Energy Projects](#)

<sup>10</sup> Standing Committee on State Development (Jun-23) [Parliamentary inquiry into feasibility of undergrounding transmission infrastructure](#)

within six months of their approval, CEIG is concerned there may be potential disruptions to these ongoing negotiations. This interference could impede the progress of project development, conflicting with one of the primary objectives of the Guidelines.

CEIG recommends that the Private Agreement Guideline includes guidance from government regarding reasonable compensation levels for neighbours, which would facilitate clarity and address social license concerns. This is currently not addressed in the draft documents.

Finally, CEIG is concerned that the Private Agreement Guideline might preserve the right to object to development. CEIG is seeking clarification from DPHI to ensure this important issue is clarified.

### **Right to access**

CEIG has observed frequent access denials without defined timelines, with landowners potentially changing their minds after applications have been lodged. CEIG believes there is an opportunity for the DPHI to define a reasonable length of time before an alternative location is agreed upon.

In addition, clarification is needed regarding the definition of 'best endeavours' to comply with the Private Agreement Guideline.

### **Monitoring of Environmental Impacts**

The Draft Private Agreement Guideline stipulates that the Developer is responsible for the cost of monitoring impacts throughout the Agreement and introduces a requirement for monitoring every 6 months from the agreement's start date. However, defining "impacts" and "monitoring" could be subjective and challenging to define, and implementing this requirement might not always be feasible. CEIG suggests further clarity on this particular requirement.

### **Model Clause Template**

The inclusion of a 'Model Clause Template' for private landowners engaged in or considering neighbour agreements – which encompasses legal and financial clauses alongside guidance regarding assessment of other impacts relevant to host landowners - is of particular concern to CEIG.

CEIG understands that the Template originated from a recommendation from the NSW Minister for Agriculture. However, CEIG urges the DPHI to weigh this recommendation against the energy industry's concerns and against the broader positive impacts of renewable energy infrastructure which is necessary to decarbonise the electricity grid and the broader NSW economy.

Introducing a legal document which is not fit for purpose and of such broad scope is out of

step with industry practice. There is a need for greater flexibility in this document.

Without the opportunity for legal review, the document appears to pose considerable risks for the industry and the energy transition by potentially setting expectations with landowners and creating uncertainties for potential financiers. It also poses a significant legal risk to the State if this legal document is later proven to be inadequate in future legal proceedings.

Investors may also be discouraged by the release of an untested template that lacks refinement based on proponent experiences and industry best practices. This may set expectations with landowners that potentially undermine the Guidelines, especially if banking and investment is tied to compliance with the Guidelines.

CEIG acknowledges the purpose of the Private Agreement Guideline, aiming for clarity and establishing reasonable expectations among landowners, neighbours, and developers, which is beneficial for all parties involved. CEIG sees the benefit of a document that offers clear and nuanced guidance on what can be expected and deemed reasonable, ensuring a level playing field for all involved parties. However, incorporating a legal template poses a risk of inadvertently becoming a compliance benchmark.

CEIG find the Model Clause Template excessively lengthy for neighbourhood agreements, potentially complicating the agreement process unnecessarily.

CEIG wishes to raise significant concerns over 3 proposed clauses of the Private Agreement Guideline:

1. Landowner's Right to Participate in Planning and Regulatory Processes (clause 4.4)
  - a. CEIG has concerns over comments that a landowner may express either in a public consultation or throughout the planning process.
  - b. CEIG recommends further clarifying this clause.
2. Monetary Compensation for Impact and Material Adverse Delay (Clause 7.1 and Schedule 6)
  - a. Those provisions have been integrated into the compensation schedule for both hosts and neighbours and appear geared towards unforeseen events.
  - b. However, CEIG is concerned that landowners could instead interpret those provisions as suggesting payments regardless of the project's attainment of Financial Investment Decision (FID)/Commercial Operation Date (COD). CEIG notes that these agreements entail a level of risk-sharing, acknowledging the shifting nature of the market to some degree.
  - c. CEIG recommends clarifying the language in these provisions, clearly delineating the conditions under which compensation applies, specifically tying it to unforeseen events to clarify these are not automatic payments irrespective of the project's stage (FID/COD) to mitigate potential misinterpretation.

### 3. Security (clause 14.1):

- a. This clause states that a security may be rejected if it is set to expire on a specific date, essentially resembling a bank guarantee in perpetuity, rather than aligning with market standards. The security mechanism grants a broad right to the Landowner, allowing them to utilise the proceeds as they see fit, especially for decommissioning purposes and infrastructure removal.
- b. This is problematic as decommissioning costs are currently uncertain and could result in significant delays in finalising agreements.
- c. There is a need for specificity, particularly regarding a bank guarantee specifically for decommissioning, with a reasonable timeframe for provision, an aspect that seems missing in the current Draft Guideline.
- d. Clarifications should ensure the timeline does not start from the signing date, addressing broader obligations outlined in the agreement before calling on the guarantee.
- e. Another potential solution is more focused work on project decommissioning, requiring collaboration between DPHI and industry. This aspect is crucial of the industry, the environment and future relationships with host landowners and communities.

Finally, CEIG seeks justification for the uniform use of a single template for Host landowners and Neighbour Agreements, considering the substantial variation in the complexity of these agreements.

### **BENEFIT SHARING GUIDELINE**

CEIG endorses frameworks that facilitate social licence and enhance conditions for community benefit sharing as they help to minimise risks associated with project deliverability, thereby de-risking investments. However, CEIG believes that the Draft Benefit Sharing Guideline sets unreasonable expectations for the community and do not improve the process of obtaining social licence.

### **Warning over total level of fees**

NSW currently has the highest planning application fees in the country, determined by the capital expenditure (CAPEX) of the development. A notable drawback is that the Department does not provide refunds for planning application fees if the as-built development turns out to be smaller than the original proposal, even if the Department played a role in reducing the project size (e.g., by mandating the removal of wind turbines from a wind farm). This approach lacks a clear rationale, therefore, CEIG suggests that if a project's size is reduced, leading to a decrease in CAPEX, proponents should have the opportunity to apply for a pro-rata partial refund of the planning application fee.

The NSW Government has expressed a preference for longer duration storage to enhance the reliability of the electricity system. Nevertheless, the existing planning fee policy of the Department inadvertently discourages the development of large-scale battery projects with

longer duration. In other states, project proponents frequently obtain land and development approval for 4 and 6-hour batteries, even if their initial plan involves constructing a 2-hour battery as part of phased investment decisions.

The existing fee structure, coupled with the EPBC Act reforms on cost recovery for assessment and approval, is likely to dissuade project proponents from quickly progressing with early-stage wind energy projects. This, in turn, may contribute to additional delays in the implementation of renewable energy developments.

High government-mandated fees also significantly limit developers' flexibility to implement their own initiatives and obtain genuine social licence<sup>11</sup>. Establishing this 'hyper local' relationship is pivotal for obtaining and maintaining social licence.

There is a lack of clarity regarding how the allocation of government-mandated fees for community, social license and employment will be spent. This ambiguity fosters a sense of disempowerment among both communities and developers. CEIG understands that the fees support Councils in principle with delivering local community projects and services, however it is critical to clarify Councils' responsibilities in fund allocation.

CEIG members have expressed concern regarding the absence of an exemption that prevents the duplication of community benefit fees, as the benefit sharing rate overlaps with components of the REZ access fee. This scenario, if not mitigated, could potentially result in financial disincentive for development within REZs.

It is imperative that the NSW Government ensures transparency in the allocation of these fees, avoiding duplication of fees and offering clear guidance on fee use, contributors and parties responsible for fee management.

### **Benefit sharing rate**

The Draft Benefit Sharing Guideline proposes introducing new benefit sharing agreements via planning agreements with Councils throughout NSW. These would entail a standard payment of \$850/MW per year for solar and \$1050/MW per year for wind, estimated to generate over \$400 million to support local government projects over the coming 25 years. CEIG notes that these payments are in addition to the material funding already accessible through the NSW Government's Community and Employment Benefit Program in REZs to be administered by EnergyCo. These rates surpass the majority of renewable projects within the SSD system currently and are out of step with other States and Territories.

CEIG finds that the benefit sharing rates for wind and solar are too high when factoring in the cumulative benefit sharing contributions required from proponents. Individually, these rates might be acceptable, but collectively, there's a risk of proponents overextending their contributions. Regarding co-located wind and solar projects, clarification should be given on

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<sup>11</sup> CEIG (Sept-23) [Response to Community Engagement Review - Discussion Paper](#)

whether proponents should apply the higher rate of \$1050/MW per year for the project's community benefit fund, combine the rates for wind and solar, or apply each rate to each technology. CEIG members are also seeking long term certainty regarding these rates, ensuring they won't face future increments.

It is crucial to recognise the financial burden on large-scale project development posed by the multitude of payments. For instance, in evaluating the purchase of a large-scale solar project, a company would need to consider the challenge posed by the requirement to pay an \$80 million bond solely for REZ access fees, before paying the \$850 per MW Community Benefit Fund. The timing of this bond payment, required before achieving financial close and securing debt financing, impedes the viability of projects, especially large-scale solar developments in NSW. CEIG is concerned that the application of these rates, alongside substantial planning application fees in NSW, land expenses and potential REZ access fees, will further diminish NSW's appeal as a jurisdiction for energy infrastructure investment.

A further concern of interest to investors and offtakers is the approximately 1.5% proposed benefit sharing scheme in addition to the 1.5% capital investment value (CIV) and the absence of a waiver to mitigate potential 'double dipping' by the existence of the community contribution under the REZ access fee. Likewise, the Guidelines should transparently address the 'multiple Local Government Areas (LGAs)' matter by explicitly stating that in cases where a project span multiple LGAs, payment contributions should align with the level of impact each LGA and its surrounding community would experience.

CEIG is concerned that the proposed Benefit Sharing Guideline might significantly influence the ongoing discussions between developers and Councils in the REZs. For instance, various local government councils within the Central West Orana REZ have existing policies that demand renewable energy proponents to offer contributions equivalent to 1.5% of their project's CIV through a Planning Agreement. There is a need for clearer guidance and assurance regarding the potential impact of the draft Benefit Sharing Guideline on projects in the developmental pipeline. Moreover, understanding how the government intends to support these projects to accelerate their approval is crucial.

### **CEIG does not support the concept of purchasing social licence**

CEIG does not support the concept of purchasing social licence as outlined in our submission on the AEIC's Community Engagement Review<sup>12</sup>. Social licence is much more complex and requires genuine engagement.

Neglecting thorough community benefit sharing leads communities to perceive these funds as a way of "buying" their approval. Community leaders highlighted during interviews with RE-Alliance the necessity of establishing trust-based relationships, fair procedures and understanding community needs to ensure that community benefit funds deliver tangible

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<sup>12</sup> CEIG (Sept-23) [Response to Community Engagement Review - Discussion Paper](#)

results<sup>13</sup>. RE-Alliance found that when communities experience positive engagement and equitable processes from the project proponent, they often have a positive perception of community benefit sharing. Conversely, in communities where renewable energy projects have caused divisions, the community benefit fund might be seen as a method of 'bribing' those who oppose the project, further deepening community divisions between supporters and opponents of the project.

Genuine engagement involves listening to concerns, building long-term relationships and providing benefits to host communities that extend beyond financial benefits. Local benefits are critical to social licence in hosting communities and must be retained as 'anchors' in any scheme that defines how communities benefit from renewable energy projects.

### **Community benefit sharing**

As we shift towards a renewable energy economy, the benefits of coordinated state-level approaches in sharing community benefits are apparent and CEIG strongly supports a state-level coordination approach. This ensures that the impact of new energy infrastructure is not only visible but broadly consistent across projects. Such a strategy is essential for the strategic development of local communities, enabling impactful initiatives like comprehensive skills training and significant infrastructure investments in education and healthcare, which might exceed the capacity of individual developers.

In building a community benefit sharing scheme, CEIG strongly recommends adopting best practice for community benefit sharing, as suggested by RE-Alliance:

1. Deliver social value
2. Deliver in the long-term
3. Build context-specific solutions
4. Give agency to communities to co-design programs
5. Be transparent and accountable
6. Measure impact
7. Create a culture of collaboration

Direct engagement between the developer and the host communities is also vital to maintain social licence and must be upheld. This grassroots engagement creates a foundation of trust and ensuring that energy projects are embraced as community assets.

In addressing the needs of communities hosting new energy infrastructure, CEIG offers a number of possible options for what to invest the funds in. This could include enhancing telecommunications for safety (often a wind farm specific benefit), financial support for aesthetic integration, local job creation for economic growth, and educational opportunities to prepare the workforce for new industries. Investing in community facilities and environmental conservation further strengthens community cohesion and ecological sustainability. Finally, affordable housing initiatives and local energy projects like solar and

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<sup>13</sup> RE-Alliance (Dec-23) [Building Stronger Communities – Community benefit funds](#)

battery storage can be proposed to ensure communities grow sustainably and manage their energy needs effectively.

By building these elements into energy project planning, NSW can aim to ensure a beneficial transition to renewable energy for all community members.

## **NEXT STEPS**

After incorporating submissions and finalising the Framework, it should be consistently implemented in a fair and consistent manner. This will require adequate resourcing from both the DPHI and referral agencies to effectively evaluate development applications.

After the Framework's finalisation, CEIG proposes that it be applicable to all new applications for renewable projects, including those currently pending that have already obtained SEARs, unless the Environmental Impact Statement (EIS) for the development is submitted within six months of the Framework's completion.

Due to the long timeline necessary for meeting assessment criteria, CEIG anticipates that the majority of pending applications will be subject to the Framework, potentially giving the impression of altering rules mid-process. In particular, CEIG urges the DPHI to explicitly confirm that modification applications for previously approved wind energy developments are exempt from any additional requirements introduced by the new Framework.

## **CONCLUDING REMARKS**

As the NSW government is aware, there is a vital role for wind and solar energy to meet NSW's energy objectives, and as such, CEIG is anticipating the final Energy Policy Framework and associated guidelines to facilitate timely and responsible industry development.

There is an opportunity for NSW to leverage successful strategies from other jurisdictions in managing the balance between affordable, reliable clean energy against various other considerations. CEIG encourages the NSW Government to follow best practices in neighbouring jurisdictions.

CEIG thanks the NSW Government for the opportunity to provide feedback on its Draft Energy Policy Framework and looks forward to continued engagement on those issues. Our Policy Director can be contacted at [marilyne.crestias@ceig.org.au](mailto:marilyne.crestias@ceig.org.au) if you would like to further discuss any elements of this submission.

Yours sincerely,



Marilyne Crestias

Policy Director

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## **Attachment 1**



HERBERT  
SMITH  
FREEHILLS



Clean Energy  
Investor Group

# DELIVERING MAJOR CLEAN ENERGY PROJECTS IN NSW

REVIEW OF NSW STATUTORY  
PLANNING APPROVALS PROCESSES



## 1 Introduction

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The timely delivery of major renewable energy and related transmission projects is critical to achieving net zero greenhouse gas (GHG) emissions by 2050 in NSW.

The speed of transformation in the energy sector must also be balanced by a coordinated approach that embraces a mix of clean energy projects and realises near term targets of the private sector delivering at least 12 GW of renewable energy generation and 2 GW of long-duration storage by 2030 under the [NSW Electricity Infrastructure Roadmap](#) (November 2020) (**Roadmap**).

Herbert Smith Freehills (HSF) and Clean Energy Investor Group (CEIG) have reviewed New South Wales (NSW) statutory planning approvals processes for major clean energy projects, including wind, solar, battery, hydro, and related transmission.

The purpose of this report is to identify, from a legal perspective, key pinch points in the NSW planning framework for major clean energy projects and 'quick wins' that would enable government, industry and developers to accelerate the delivery of renewable energy generation in NSW as coal fired power stations are retired.

This report focuses on planning pathways for State significant development (SSD), State significant infrastructure (SSI) and critical SSI (CSSI) clean energy and transmission projects in NSW and the related factors that can materially impact the assessment and approval of these projects, including the assessment of biodiversity, visual, noise and vibration impacts, cultural heritage, and land and transmission components.

For clean energy and transmission projects in NSW, this report explores:

- State-based net zero and other key climate and energy policies, and their relevance to the delivery of renewable electricity generation;
- the State significant statutory planning framework, including recent trends, and key strengths and challenges;
- quick wins to streamline and secure renewable energy investment and timely project delivery; and
- longer-term reform opportunities.

The findings set out in this report contribute to ongoing discussions on how to secure and deliver clean energy and transmission projects in NSW to meet pressing electricity generation and storage targets for the Commonwealth and State.

This report also forms part of a broader review by HSF and CEIG to identify opportunities to streamline approvals processes for clean energy and transmission projects in other Australian jurisdictions.

### NSW must provide greater approval and timing certainty for clean energy projects

For the last five years, average approval timeframes in NSW for major clean energy development applications (DAs) include:

- **746 days** for SSD projects
  - 3488 days for **wind**
  - 705 days for **solar**
  - 530 days for **battery**
- **492 days** for CSSI projects (including hydro and transmission)

*Based on our review of the NSW Department of Planning and Environment Major Projects website (as at 30 November 2023) in relation to State significant projects for the period from October 2018 to November 2023 (HSF Review).*

## 2 Key recommendations

A snapshot of the key recommendations set out in this report to achieve 'quick wins' that accelerate planning approval processes in NSW to drive renewable energy investment and the delivery of clean energy and transmission projects is below.

		Page
<b>State significant planning pathways</b>	1 Broader use of CSSI declarations to meet the State's critical energy needs	9-13
	2 Streamline the DA assessment process with improved inter-agency coordination	
	3 Allow conditions to do the work (where appropriate)	
<b>Biodiversity</b>	4 Improve clarity regarding the applicability of draft / interim guidelines	14-16
	5 Align land clearing standards across the State	
	6 Improve landscape-scale biodiversity assessments	
<b>Visual, noise and vibration</b>	7 Prepare a clear and reasonable dwelling entitlement methodology	17-19
	8 Explore further improvements to visual impact assessment	
	9 Streamline Secretary's environmental assessment requirements and/or appropriately use approval conditions	
<b>Cultural heritage</b>	10 Establish a robust consultation framework	20-21
	11 Assess connection to Country	
<b>Land and transmission</b>	12 Strengthen local social licences	22-24
	13 Secure land and transmission routes and deliver strategic solutions upfront	
	14 Address industry feedback on the draft private agreement template	

## 3 Delivering clean energy projects to achieve net zero

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### 3.1 NSW has adopted staggered targets to net zero

As early as November 2016, with the release of its Climate Change Policy Framework,<sup>1</sup> the NSW Government has had an objective to achieve net zero GHG emissions by 2050 and to make NSW more resilient to a changing climate.

In March 2020, this was formalised as a target within a Net Zero Plan which also aimed to reduce emissions by 35% by 2030 compared to 2005 levels.<sup>2</sup>

On 11 December 2023, the *Climate Change (Net Zero Future) Act 2023 (Net Zero Act)* entered into force, establishing guiding principles for action to address climate change.<sup>3</sup> The Net Zero Act legislates targets to reduce GHG emissions by 50% by 2030, 70% by 2035 and to achieve net zero by 2050.<sup>4</sup> The Net Zero Act also establishes a Net Zero Commission to monitor and report on the State's progress to address climate change in alignment with the Paris Agreement.<sup>5</sup>

### 3.2 The energy transition is essential to decarbonisation

Coal-fired generation is retiring faster than expected, with 60% of capacity withdrawn by 2030.<sup>6</sup> Due to this, a transition away from conventional fossil fuels and towards renewable energy is essential to achieving the State's net zero targets.

Over the years, NSW has released various strategies for electricity generation and transmission, to promote and coordinate investment in renewable energy technologies, including wind and solar energy generation, battery storage, and pumped-hydro storage, in addition to transmission that seeks to overcome congestion in an electricity system designed for conventional fossil fuel infrastructure rather than a decentralised renewable energy zone (**REZ**) network in the State.<sup>7</sup>

More recently, the Roadmap provides a focused strategy that aims to modernise the electricity system and direct investment in clean energy and transmission projects at speed. Due to the scale of the challenge, a number of government organisations and stakeholders are delivering the energy transformation in NSW alongside the private sector.

Broadly, this includes objectives and policies to:

- construct generation infrastructure that produces the same electricity as 8 GW in the New England REZ, 3 GW in the Central-West Orana REZ, and 1 GW of additional capacity elsewhere by the end of 2029;<sup>8</sup>
- construct long-duration storage infrastructure with 2 GW capacity by the end of 2029;<sup>9</sup>

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<sup>1</sup> [NSW Climate Change Policy Framework](#) (November 2016).

<sup>2</sup> [Net Zero Plan Stage 1: 2020-2030](#) (March 2020).

<sup>3</sup> Net Zero Act s 8.

<sup>4</sup> Net Zero Act s 9.

<sup>5</sup> Net Zero Act Pt 3; *Paris Agreement*, opened for signature 22 April 2016 [2016] ATS 24 (entered into force 4 November 2016).

<sup>6</sup> [2022 Integrated System Plan](#) (AEMO, June 2022).

<sup>7</sup> For example, the [NSW Transmission Infrastructure Strategy](#) (November 2018), [NSW Pumped Hydro Roadmap](#) (December 2018) and [NSW Electricity Strategy](#) (November 2019).

<sup>8</sup> *Electricity Infrastructure Investment Act 2020* (NSW) (**EII Act**) s 44.

<sup>9</sup> EII Act s 44.

- deliver transmission, including REZ network infrastructure and priority transmission infrastructure projects;<sup>10</sup>
- provide payment schemes that compensate landholders for hosting transmission infrastructure;<sup>11</sup>
- incentivise the installation of energy efficient equipment and appliances in households and businesses to achieve an energy savings target of 13% by 2030 under the Energy Savings Scheme;<sup>12</sup> and
- incentivise households and businesses to reduce energy consumption during hours of peak electricity demand to achieve a demand reduction target of 10% by 2030.<sup>13</sup>

The above targets illustrate the extent of private investment required in new energy generation and transmission infrastructure throughout the State.

To guide and attract this investment, Energy Corporation of NSW (**EnergyCo**) is one of the key entities delivering the Roadmap. EnergyCo has defined roles under the *Energy and Utilities Administration Act 1987* (NSW) and the *Electricity Infrastructure Investment Act 2020* (NSW) (**EII Act**), and a clear mandate to support an accelerated energy transition in NSW under Roadmap.

Under the EII Act, EnergyCo is the appointed 'Infrastructure Planner' to deliver the first five NSW REZs and achieve the minimum 'infrastructure investment objectives' under section 44 of the EII Act (see the first two bullet points above).

The important role of EnergyCo and other actors delivering energy investment and infrastructure must be supported by a clear and robust planning approvals framework.

### 3.3 Timely clean energy project delivery is critical

The energy targets for NSW demonstrate a clear need to secure the timely delivery of clean energy and transmission projects in order to reduce risk, cost and capacity issues.

The importance of these targets means it is critical to provide a streamlined pathway that allows for the State's clean energy needs to be addressed.

Securing this outcome is largely dependent on ensuring NSW has a statutory planning assessment and approval process that operates efficiently, thoroughly, transparently, and without undue delay.

In preparing this report, industry feedback highlighted the importance of the NSW planning framework:

- complementing the aims and practical implications of NSW energy policies;
- supporting the initiatives of the NSW Government, EnergyCo and other stakeholders; and
- realising greater efficiencies through the DA assessment process for proponents.

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<sup>10</sup> EII Act s 34; Roadmap.

<sup>11</sup> [Strategic Benefit Payments Scheme](#) (October 2022).

<sup>12</sup> [Energy Savings Scheme](#) (website as at November 2023).

<sup>13</sup> [Peak Demand Reduction Scheme](#) (website as at November 2023).

## 4 NSW's planning framework to deliver clean energy projects

### 4.1 A longstanding, flexible planning system

The NSW planning framework is a longstanding comprehensive statutory framework to manage land use and development across the State.

The *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**) regulates the development and use of land through permissibility controls and planning pathways for the lodgement, assessment and determination of DAs.

The permissibility and approval pathway that applies to a particular development is determined by reference to the EP&A Act, the *Environmental Planning and Assessment Regulation 2021* (NSW) (**EP&A Regulation**) and relevant environmental planning instruments (**EPIs**), known as State environmental planning policies (**SEPPs**) or local environmental plans (**LEPs**).

The key planning approval pathways under the EP&A Act for major clean energy projects in NSW are set out in the table below.

Pathway	How declared?	EP&A Act
<b>SSD</b>	SEPP or Minister (with advice from the Independent Planning Commission ( <b>IPC</b> ) on the project's significance)	Division 4.7
<b>SSI</b>	SEPP or Minister (with advice from the IPC on the project's significance)	Division 5.2
<b>CSSI</b>	Minister (if the project is essential for the State for economic, environmental or social reasons)	Section 5.13

Under this regulatory framework, there is some flexibility to prescribe certain land or projects to form part of the State significant assessment and approval process.

### 4.2 Clean energy projects are largely SSD

In NSW, most major clean energy projects are SSD. From our review, in the past five years from October 2018 to November 2023:

- **48 major renewable energy projects** have been **approved**;
- **solar energy projects** comprise the largest proportion of approvals; and
- **20 major renewable energy projects had a BESS component**.<sup>14</sup>

Network connections and transmission lines may also be delivered as part of an SSD project, but also attract other declarations (see section 4.3 below).

Key EPIs that determine the permissibility and approval pathways for major clean energy and transmission projects:

- *State Environmental Planning Policy (Planning Systems) 2021 (PS SEPP)*; and
- *State Environmental Planning Policy (Transport and Infrastructure) 2021 (T&I SEPP)*.

<sup>14</sup> HSF Review.

The PS SEPP is the primary SEPP that identifies which development types and areas are declared to be SSD, SSI or CSSI. The PS SEPP also lists development that has been 'called in' as a State significant project.

Relevantly, clean energy projects are classed as 'electricity generating works' under the PS SEPP, which includes solar, wind or hydro power energy sources.

The PS SEPP currently declares 'electricity generating works' to be SSD if they require development consent under Part 4 of the EP&A Act and the project has a capital investment value of:

- over \$30 million; or
- over \$10 million and within a State significant environmentally sensitive area.

It is also open to the Minister for Planning and Public Spaces to declare by Ministerial order specified development on specified land to be SSD.

As SSD, the permissibility of a project on land in NSW will be subject to the EP&A Act and relevant EPIs. In particular, clean energy proponents will look to:

- the T&I SEPP, which provides a permissibility pathway for 'electricity generating works' and 'electricity transmission or distribution networks' on certain land in NSW; and
- land use zoning under any relevant LEP(s).

#### 4.3 Transmission projects are mostly SSI

Major transmission development in NSW will typically be declared SSI.

The PS SEPP provides that, if a public authority seeks to deliver transmission development and considers that an environmental impact statement (**EIS**) is required due to the likelihood of significant impact on the environment, the transmission project is SSI.

It is also open to the Minister for Planning and Public Spaces to declare by Ministerial order specified infrastructure development on specified land to be SSI.

Relevantly, the PS SEPP currently lists the Snowy 2.0 and Transmission Project to be SSI and CSSI.

#### 4.4 The Minister may also assess projects as CSSI

Any development that is considered essential to the State for economic, environmental or social reasons may be declared CSSI by Ministerial order.

The Minister has a broad discretion to make a CSSI declaration and there are clear benefits to doing so.

Relevantly, the PS SEPP currently lists Project EnergyConnect (SA to NSW Electricity Interconnector), the Oven Mountain Pumped Hydro Energy Storage Project, the Shoalhaven Hydro Expansion Project, the Central-West Orana REZ Transmission project, and Waratah Super Battery Project to be CSSI.

The above projects demonstrate a willingness by the NSW Government to declare renewable projects such as battery and hydro projects, in addition to transmission development, as CSSI.

On average, SSD and CSSI DAs (excluding modifications) for major clean energy and transmission projects take **746 days** and **492 days**, respectively, to be approved.<sup>15</sup>

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<sup>15</sup> HSF Review.

In addition to a reduced timeframe to secure an approval, the CSSI declaration also mitigates appeal and enforcement risk in recognition of the importance of delivering certain development.

This is illustrated in the table below, which details the third party appeal rights for the State significant planning pathways.

	SSD		SSI		CSSI	
	<i>Available</i>	<i>Time limit</i>	<i>Available</i>	<i>Time limit</i>	<i>Available</i>	<i>Time limit</i>
<b>Merits review</b>	Objectors only	28 days	No	-	No	-
<b>Judicial review</b>	Any person	3 months	Any person	3 months	With Minister's approval	3 months

In addition, limits are placed on the issue of development control orders under the EP&A Act and certain directions, orders or notices under other NSW legislation to ensure that interference with the CSSI project is minimised.

#### 4.5 A standardised process guides assessment in NSW

Although each of the State significant planning pathways is subject to a tailored process, State significant projects follow a largely similar DA and assessment process under the EP&A Act.

The key steps for a proponent under the NSW assessment process are set out in the table below.

#	Key step
1	Request Secretary's environmental assessment requirements ( <b>SEARs</b> )
2	Prepare an EIS
3	Exhibit the DA and EIS for at least 28 days
4	Respond to submissions made during the exhibition period
5	Receive an assessment report prepared by the Secretary of NSW Department of Planning and Environment ( <b>DPE</b> )
6	Await determination by the Minister (or delegate) or the IPC (if the local council or 50 or more persons objected to the DA, or the applicant has made a reportable political donation)

The planning pathways for SDD and SSI projects is, in part, intended to fast-track their assessment and approval compared to assessment under Part 4 of the EP&A Act.

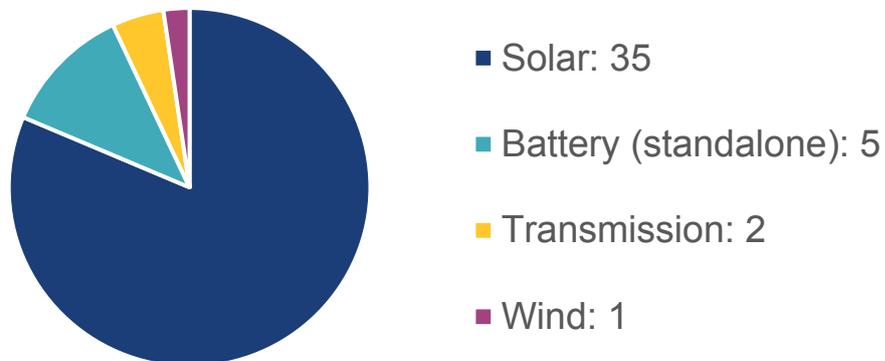
As discussed in this report, there are further opportunities to streamline the NSW planning system to support the urgent rollout of energy infrastructure.

#### 4.6 Our legal review

The following sections of this report explore the key strengths and challenges with respect to the State significant planning processes, and the key aspects of a project that are assessed, including biodiversity, visual, noise and vibration, cultural heritage, land and sometimes transmission.

We also outline some 'quick wins' to drive more immediate change in the NSW planning system and highlight longer-term reform opportunities (e.g. legislative change) that may assist clean energy and transmission proponents, and support the renewable energy generation targets for NSW, including wind energy generation approvals in comparison to the last five years (see below).

**Major wind, solar, battery and transmission approvals in NSW  
across the last 5 years<sup>16</sup>**



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<sup>16</sup> HSF Review.

## 5 State significant planning pathways

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### 5.1 Overview

In NSW, the statutory approval process for clean energy projects is governed by the EP&A Act, the EP&A Regulation, EPIs, related guidelines and other policies.

The State-based planning approvals framework requires proponents to determine the relevant planning pathway and navigate the applicable assessment process. As discussed in the above section, a major clean energy or transmission project will typically be SSD, SSI or CSSI under the NSW planning system.

This section 5 examines the key strengths, challenges and opportunities to achieve better outcomes through the State significant planning approval process for a clean energy and transmission project.

Further, as discussed in sections 6 to 9 below, the DA process examines key aspects of a project, including biodiversity, visual, noise and vibration, cultural heritage, land and sometimes transmission.

### 5.2 Draft Energy Policy Framework

When preparing this report, DPE released the Draft Energy Policy Framework (**Draft Framework**) and related guidelines for public exhibition until 29 January 2024.

The Draft Framework comprises the following draft guidelines:

- Draft Wind Energy Guideline (plus associated technical supplements);
- Draft Transmission Guideline (plus an associated technical supplement);
- Draft Benefit Sharing Guideline; and
- Draft Private Agreement Guideline.

The Draft Framework also includes a new Solar Energy Guideline, which incorporates more limited updates to the existing Large-scale Solar Energy Guideline.

The Draft Framework and related guidelines has generated informed discussion within the clean energy industry and DPE during the consultation period.

To contribute to the current conversation, this report also comments on key aspects of the Draft Framework based on industry feedback.

These draft guidelines will apply to DAs for which SEARs have already been issued if an EIS is not submitted within six months from the date of finalisation of each guideline.

### 5.3 Key strengths and challenges

Based on our legal review of the NSW planning framework and industry feedback, we identify the key strengths and challenges for clean energy and transmission projects in the table below.

Key strengths	Key challenges
<p><b>SSD</b></p> <ul style="list-style-type: none"> <li>Greater resourcing and support from DPE officers in comparison to obtaining non-State significant development consent under Part 4 of the EP&amp;A Act.</li> <li>Certain secondary approvals are not required to be obtained (s 4.41, EP&amp;A Act).</li> <li>Other secondary approvals cannot be refused and must be issued substantially consistent with the SSD consent (s 4.42, EP&amp;A Act).</li> </ul>	<ul style="list-style-type: none"> <li>Requests for information (<b>RFIs</b>) by DPE and other agencies are causing approval delays and costly re-assessment requirements at late stages of the approval process.</li> <li>Cost and time implications due to informal soft lodgement processes before obtaining SEARs and changing expectations during the assessment process.</li> <li>Ongoing industry standard of producing long, complex and repetitive EIS documentation that does not following the applicable guidelines for the preparing of an EIS.</li> <li>A higher risk of legal challenge due to the nature of clean energy projects, which increases project delivery uncertainty and commissioning timeframes, particularly for wind energy.</li> </ul>
<p><b>SSI</b></p> <ul style="list-style-type: none"> <li>More flexible modification powers and streamlined environmental assessment requirements may be issued.</li> <li>Lower risk of legal challenge as no merits review appeal rights offered to third parties.</li> <li>Exemption from Part 3 of the EP&amp;A Act and other EPIs, except where they apply to a declaration of SSI and only insofar as they relate to the suspension of laws.</li> <li>As above for SSD.</li> </ul>	<ul style="list-style-type: none"> <li>Risk of legal challenge as any person may commence judicial review proceedings within three months.</li> <li>As above for SSD (bullet points 1 to 3).</li> </ul>
<p><b>CSSI</b></p> <ul style="list-style-type: none"> <li>Fastest determination timeframes.</li> <li>Reduced risk of legal challenge as third party judicial review rights are only available where an application for review is made or approved by the relevant Minister.</li> <li>Development control orders and certain other enforcement action cannot prevent or interfere with an approved CSSI project.</li> <li>As above for SSD and SSI.</li> </ul>	<ul style="list-style-type: none"> <li>Limited access to CSSI planning pathway for the clean energy projects, which are delivering a critical State need.</li> <li>As above for SSD (bullet point 1).</li> </ul>

## 5.4 'Quick win' opportunities

Based on our review and industry feedback, we outline some key opportunities below that may achieve 'quick wins' under the existing NSW planning framework to streamline State significant planning approvals for major clean energy projects.

### Opportunity 1: Broader use of CSSI declarations to meet the State's critical energy needs

Accelerate the delivery of clean energy projects via CSSI declarations, particularly wind energy.

Approved renewable energy projects have predominately advanced through the SSD pathway, rather than the SSI or CSSI pathways.<sup>17</sup> This is despite the CSSI approval pathway providing a materially quicker average approval timeframe (see section 4.4 above).

As set out in the table at section 5.3 above, other benefits relating to this approval pathway include a flexible power to modify CSSI approvals, the issue of streamlined environmental assessment requirements, and a reduced risk of legal challenge to provide greater post-approval certainty.

To support the energy transition and meet State-based 2030 targets, an expanded use of CSSI declarations is an achievable 'quick win' for the NSW Government to rapidly progress the assessment and approval of clean energy and transmission projects.

#### Implementation

The Minister for Planning and Public Spaces may use his discretion under section 5.13 of the EP&A Act to declare any relevant categories of clean energy and transmission development to be CSSI on the basis that it is essential for economic, environmental, or social reasons.

DPE may also reduce the stated 'significant energy storage system' guidance (a delivery capacity threshold of 750 MW or more) for the Minister to consider CSSI requests. This would encourage greater requests for CSSI and appropriately reflect the need for projects of varying sizes across the State.

### Opportunity 2: Streamline the DA assessment process with improved inter-agency coordination

Streamline DPE assessment processes, irrespective of the planning pathway.

Key improvements can be achieved through:

- removing the need for soft lodgements, or reducing soft lodgement timeframes before obtaining SEARs;
- resetting an industry approach that is currently producing long, complex and repetitive EIS documentation; and
- restricting the number of RFIs and the period for RFIs during the assessment process.

Project or industry-based targeted fast-tracking could also be adopted by DPE based on the State's energy needs, similar to the Planning System Acceleration Program that was introduced as a COVID-19 response. This would allow for DPE to accelerate the delivery of specific projects on a case-by-case basis depending on the energy generation pipeline and related critical targets.

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<sup>17</sup> HSF Review.

### Implementation

DPE may review internal policies and procedures relating to soft lodgements and RFIs. Inter-agency arrangements may also be reviewed and refreshed (if required) to ensure that they are fit-for-purpose, and meet DPE and industry expectations to progress DA assessments in a timely manner.

Any internal changes should be clearly promoted to industry and clean energy proponents.

### Opportunity 3: Allow conditions to do the work (where appropriate)

Use the imposition of conditions in a more appropriate and effective manner that allows for assessments to be completed at appropriate times during the approval and post-approval stages.

Planning approval conditions are, by design, a method of securing environmental outcomes and future compliance with respect to the development and/or use of land.

There is scope to place greater reliance on the conditioning power of a consent authority to avoid the need for overly prescriptive assessments or other work during the assessment stage when such action is more appropriately performed at the post-approval stage.

### Implementation

DPE may review the types of issues arising for clean energy projects during DA assessment and explore opportunities to condition particular assessments that are being undertaken too early in the development pipeline. This may require DPE to review the currency of its current conditions for clean energy and transmission projects.

## 5.5 Longer-term opportunities

In preparing this report, we also considered reform opportunities that may be considered as longer-term goals for government, industry and proponents. A selection of the key goals discussed with industry bodies and clean energy proponents is below.

### Complying development pathways for major clean energy projects

Expand the use of complying development approval pathways to include major clean energy projects. There is precedent in other Australian jurisdictions to have a greater reliance on code assessments using comprehensive environmental benchmarks to deliver clean energy projects (e.g. Queensland).

An increased reliance on code-assessed projects would establish clear expectations for industry while also maintaining strong environmental outcomes.

This approach has the ability to realise significant reductions in approval timeframes (see the State comparison of average approval times on the next page).

**Reduced DA fees and clear contributions requirements**

Reduce DA fees<sup>18</sup> and increase certainty with respect to contributions would improve the attractiveness of developing and investing in NSW.

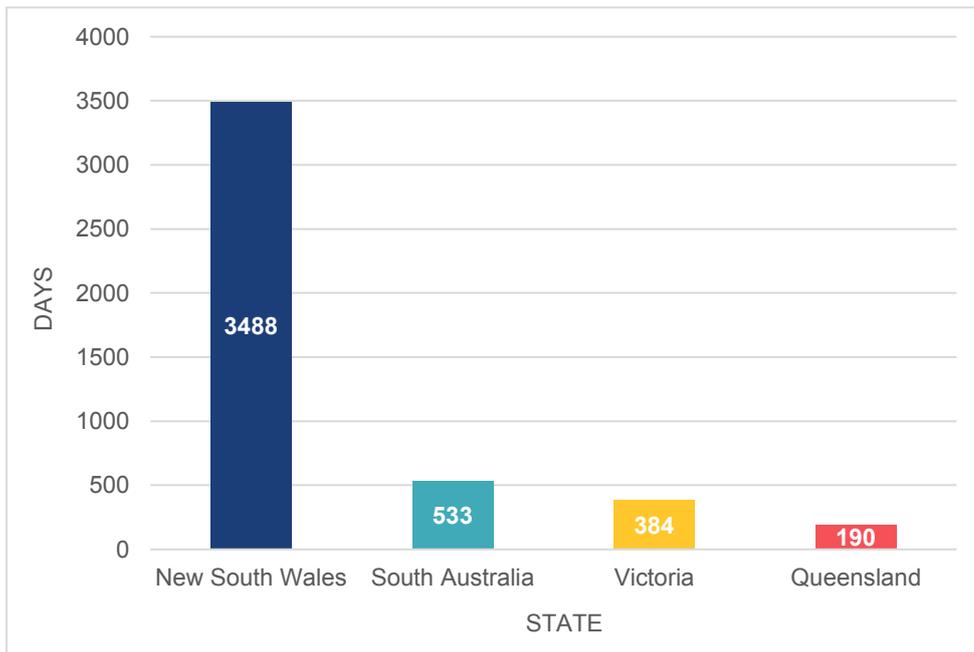
The Draft Benefit Sharing Guideline assists to provide greater clarity on the extent of contributions for a clean energy project. However, any proposed benefit sharing rate must ensure that it continues to incentivise clean energy investment in NSW and allow sufficient flexibility depending on the type of generation so that it is not a monetary target that prohibits smaller-scale projects.

**Higher threshold to trigger IPC as determining authority**

Long approval times under the NSW planning framework are further exacerbated when engagement with the IPC is required, particularly for wind energy.

Triggers for the IPC to become the determining authority should be reassessed if clean energy projects continue to be primarily SSD.

**State comparison of average approval times for major wind projects across the last 5 years<sup>19</sup>**



<sup>18</sup> For example, a 4.5 GW wind farm project may attract a DA fee of around \$4.5 million in NSW (Review of industry research and analysis).

<sup>19</sup> Review of industry research and analysis; HSF Review.

## 6 Biodiversity

### 6.1 Overview

In NSW, the EP&A Act primarily works in conjunction with the *Biodiversity Conservation Act 2016* (**BC Act**) and *Biodiversity Conservation Regulation 2017* (**BC Regulation**) to address impacts on biodiversity in NSW from clearing and development.

Under this framework, biodiversity impacts are assessed for major projects by reference to each of those statutes, the Biodiversity Offsets Scheme (**BOS**) under Part 6 of the BC Act and accompanying guidelines, including the *Biodiversity Assessment Method 2020* (**BAM**) that forms part of the BOS. The BAM provides a consistent method to assess impacts on biodiversity values from a major project and determine offsetting of unavoidable impacts on biodiversity.

At a Commonwealth level, in circumstances where a project is likely to have a significant impact on a matter of national environmental significance (**MNES**), referral to the Commonwealth Minister is required that may result in an additional environmental assessment and approval process under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**).

To streamline the two assessment processes, NSW and the Commonwealth have a bilateral agreement dated March 2020 in place which accredits NSW's processes for environmental impact assessment and requires NSW to provide the Commonwealth with an assessment report and recommendation. This 'one stop shop' for environmental assessment reduces duplication and delay. However, the Commonwealth retains the ability to independently determine whether to approve or refuse the project under the EPBC Act, including the discretion to impose additional approval conditions.

This section 6 examines the key strengths, challenges and opportunities to achieve better outcomes with respect to biodiversity aspects of a major clean energy or transmission project.

### 6.2 Key strengths and challenges

Based on our legal review of the NSW planning framework and industry feedback, we identify the key strengths and challenges for clean energy and transmission projects in the tables below.

#### Key strengths

- The BAM and accompanying offset calculator provide certainty for proponents and clear outcomes for specific sites.
- Commonwealth and NSW government bilateral agreement allows for impacts on MNES under the EPBC Act to be assessed under NSW's assessment process, thereby reducing time and costs in the assessment process.

#### Key challenges

- Satisfying offset obligations where the supply of biodiversity credits is not sufficient or always appropriate.
- Changing expectations during the assessment process and potential requirements to engage with draft or interim guidelines post-DA lodgement.
- Interactions with the Commonwealth environmental assessment process under the EPBC Act and risk of additional conditions of approval being imposed at a late stage of the overall project approval process.
- Application of the BAM is typically on a site-by-site basis and is not fit-for-purpose to appropriately address impacts more broadly within a landscape (e.g. wind farms and linear projects), including cumulative impacts.

### 6.3 'Quick win' opportunities

Based on our review and industry feedback, we outline some key opportunities below that may provide 'quick wins' under the existing NSW planning framework to streamline biodiversity aspects of a major clean energy project.

#### Opportunity 4: Improve clarity regarding the applicability of draft / interim guidelines

Give comfort to industry and proponents interacting with the NSW planning approvals process through clear transitional arrangements and statements as to applicability for DAs under assessment.

Industry accepts that new guidelines and policies will be prepared, exhibited, and published to guide assessment and approval processes as the energy transition accelerates. However, clarity with respect to the commencement of such changes, and who is impacted, is critical.

#### Implementation

DPE may review internal policies and procedures relating to DA process to clarify the need for a proponent to address draft or interim guidelines or other policies after DA-lodgement.

DPE and other NSW Government agencies should also consider incorporating clear statements with respect to any transitional arrangements as part of any release of draft or interim guidelines or policies.

Any internal changes should be clearly promoted to industry and clean energy proponents.

#### Opportunity 5: Align land clearing standards across the State

Review and consider reform of the existing biodiversity conservation framework under the BC Act and *Local Land Services Act 2013 (LLS Act)*. The current framework is complex and allows for different biodiversity outcomes depending on the proposed development or use of land.

This has resulted in proponents of clean energy or transmission projects being subject to more costly offsets in circumstances where similar clearing for a different purpose (e.g. farming) does not attract the same onerous offset obligations.

#### Implementation

NSW Government may consider legislative reform to the BC Act and LLS Act to achieve better alignment between different clearing practices across various industries and the required offsetting.

#### Opportunity 6: Improve landscape-scale biodiversity assessments

Revise the BAM to allow for landscape-scale biodiversity impacts to be appropriately assessed. This would allow for suitable avoidance and mitigation measures to be adopted and offsets secured to achieve a standard of 'no net loss' biodiversity. The limitations of the current BAM as a site-by-site tool results in assessments that are too complex and not representative of the assessment impacts more broadly within a landscape for projects such as wind energy and transmission lines.

#### Implementation

DPE may consider updates to the BOS, including the BAM, to accommodate a proper assessment method with respect to impacts more broadly within a landscape, including cumulative impacts.

## 6.4 Longer-term opportunities

In preparing this report, we also considered reform opportunities that may be considered as longer-term goals for government, industry and proponents. A selection of the key goals discussed with industry bodies and clean energy proponents is below.

### Establish a biodiversity credit register

Establish a register of credit types (including availability on the market and permissibility to pay into the Biodiversity Conservation Fund) and obligations.

### Align with Commonwealth 'nature positive' reforms

Secure a pathway for improved alignment between Federal and State biodiversity conservation frameworks as part of the upcoming 'nature positive' reforms.

Suitability of the biodiversity conservation framework under the BC Act, the BC Regulation, including the BOS, should be considered on release of the Commonwealth environmental reform package.

### Adopt a strategic assessment approach (biodiversity landscape-scale assessment)

Adopt a strategic approach through upfront referral, assessment and related offsetting. The introduction of REZs and rollout of substantial electricity infrastructure across the State presents an opportunity to streamline certain approvals that would assist one or a number of projects in a similar area.

A strategic approach to securing land by agreement or compulsory acquisition for the purposes of conservation and biodiversity credit creation would enable large-scale biodiversity conservation outcomes alongside the generation of funds through the sale of credits to private developers.

Working with the Commonwealth, this approach would allow for strategic referral, assessment and offsetting of targeted areas with respect to expected impacts arising from potential clean energy projects and/or transmission lines. If there is a preference to preserve rights under the existing EPBC Act before the new 'nature positive' framework is introduced, this strategic approach may be an attractive option.

## 7 Visual, noise and vibration

### 7.1 Overview

Landscape and visual impacts are assessed under the EP&A Act according to development type. For example, currently the *Wind Energy: Visual Assessment Bulletin* (DPE, 2016) and *Wind Energy Guideline* (DPE, 2016) are relevant to wind energy projects and the *Solar glint and glare impacts - Large Scale Solar Energy Guideline* (DPIE, 2022) is relevant to solar energy projects. Further, projects which include infrastructure that will emit light are often assessed against the *Dark Sky Planning Guideline* (2023).

Similarly, NSW has developed guidelines for the assessment of noise and vibration impacts, including the *Wind turbine noise – NSW Wind Energy: Noise Assessment Bulletin* (EPA/DPE, Dec 2016), *Ancillary infrastructure noise – NSW Noise Policy for Industry* (EPA, 2017), *Construction noise – Interim Construction Noise Guidelines*; *Traffic noise – NSW Road Noise Policy* (DECCW, 2011), and *Vibration – Assessing Vibration – A Technical Guidelines* (DECC, 2006).

Noise and vibration impacts are also subject to regulation under the *Protection of the Environment Operations Act 1997* (NSW) and environmental protection licences under that Act may permit certain activities that are likely to impact on the environment or cause pollution.

This section 7 examines the key strengths, challenges and opportunities to achieve better outcomes with respect to visual, noise and vibration aspects of a major clean energy or transmission project.

### 7.2 Key strengths and challenges

Based on our legal review of the NSW planning framework and industry feedback, we identify the key strengths and challenges for clean energy and transmission projects in the tables below.

#### Key strengths

- Option to use landowner and neighbour agreements to address project requirements and expected impacts.
- The Draft Energy Policy Framework and related draft guidelines aim to support high quality landscape and visual impact assessment.

#### Key challenges

- Proponents are subject to complex, costly and uncertain assessment requirements with respect to dwelling entitlements (as retained and not clarified in the technical supplement to the Draft Wind Energy Guideline).
- Compared to other Australian jurisdictions, more onerous visual impact assessment requirements are imposed in circumstances where landowners do not have a proprietary right or ownership of a view and visible infrastructure does not necessarily constitute a visual impact (as acknowledged in the Draft Framework).
- Addressing matters relating to cumulative impact assessment in areas of more concentrated clean energy and transmission development.

### 7.3 'Quick win' opportunities

Based on our review and industry feedback, we outline some key opportunities below that may provide 'quick wins' under the existing NSW planning framework to streamline visual, noise and vibration aspects of a major clean energy project.

#### Opportunity 7: Prepare a clear and reasonable dwelling entitlement methodology

Provide a clear and reasonable methodology for assessing impacts relating to dwelling entitlements and a mechanism to ensure that dwelling entitlements are not used to inhibit the delivery of clean energy projects should be developed if assessment is required. There is an opportunity for greater clarity to be provided in the technical supplement to the Draft Wind Energy Guideline to establish a scope for the expected assessment and include guidance on the materiality of any findings for the approval process.

#### Implementation

We expect that DPE will consider industry feedback provided during the consultation period for the Draft Framework. As part of this process, DPE may revise the technical supplement to the Draft Wind Energy Guideline to clarify the scope of assessment (if the guidance is retained). Further, it is open to DPE to address how any findings from an assessment of dwelling entitlements will be considered during the assessment process.

#### Opportunity 8: Explore further improvements to visual impact assessment

Address key concerns from leading registered landscape architects with respect to the visual impact assessment in the Draft Framework, including the proposed use of a grid system and adopting not assigning a sensitivity level to private dwellings.

#### Implementation

DPE may consider further revisions to the technical supplement to the Draft Wind Energy Guideline to provide further comfort to industry, proponents and visual experts that the proposed method of visual impact assessment is fit-for-purpose.

#### Opportunity 9: Streamline SEARs and/or appropriately use approval conditions

Exclude express references to dwelling entitlements under SEARs for major clean energy or transmission projects. An appropriate condition of approval could also be used by a consent authority to manage potential impacts on dwelling entitlements. For example, an acquisition condition could be imposed by a consent authority to require a proponent to acquire all (or the relevant part) of a neighbouring property at market value on request of the landowner if any visual, noise or vibration impacts are unacceptable. For wind energy projects, this would avoid the blunt approach of deleting turbines during the assessment process based on potential visual, noise or vibration impacts.

#### Implementation

The Secretary of DPE and a consent authority may adopt the above approach when issuing SEARs or conditions of approval, respectively, for a clean energy or transmission project.

## 7.4 Longer-term opportunities

In preparing this report, we also considered reform opportunities that may be considered as longer-term goals for government, industry and proponents. A selection of the key goals discussed with industry bodies and clean energy proponents is below.

**Reset community expectations regarding visual impact**

Seek to improve community acceptance and a social licence for clean energy and transmission projects, NSW Government must seek to reset the narrative and focus on the capacity of the renewables transition to achieve legislated energy targets.

**Provide additional clarity on assessing dwelling entitlements**

Assuming the 'quick wins' above in relation to the assessment of dwelling entitlements are adopted, seek reform to remove or strongly mitigate any environmental assessment requirements with respect to such entitlements.

An instrument (e.g. a SEPP) could be created to address the extent to which an assessment of dwelling entitlements is required or, alternatively, make it clear that it is not a relevant consideration when assessing major clean energy or transmission projects.

To mitigate activist action, there may also be scope for an instrument to exclude any consideration of DAs lodged after the issue of SEARs for a project.

**Adopt a strategic assessment approach (upfront assessment and acquisition if required)**

Adopt a strategic approach to securing land by agreement or compulsory acquisition for the purposes of addressing visual, noise and vibration impacts upfront would allow for a streamlined assessment of impacts for any subsequent clean energy and transmission projects in the same locality.

## 8 Cultural heritage

### 8.1 Overview

The EP&A Act works alongside the *National Parks and Wildlife Act 1974* (NSW) (**NPW Act**) to regulate impacts on Aboriginal objects and places. It is an offence under the NPW Act to harm or desecrate an object or place that the person knows is an Aboriginal object or place without the authority of an Aboriginal heritage impact permit, unless exceptions apply.

Although State significant projects are exempt from requiring a permit under the NPW Act, cultural heritage impacts still require assessment, including by reference to the *Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW* (OEH, 2011), *Code of Practice for the Archaeological Investigation of Aboriginal Objects in NSW* (DECCW, 2010), and *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (DECCW, 2010).

This section 8 examines the key strengths, challenges and opportunities to achieve better outcomes with respect to cultural heritage aspects of a major clean energy or transmission project

### 8.2 Key strengths and challenges

Based on our legal review of the NSW planning framework and industry feedback, we identify the key strengths and challenges for clean energy and transmission projects in the tables below.

#### Key strengths

- Streamlined planning pathway for assessing and authorising heritage impacts.
- Proven and thorough approach to cultural heritage assessment.
- Penalties for unauthorised impacts on objects and places.

#### Key challenges

- Achieving comprehensive participation by cultural owners and determining whether sufficient consultation has occurred.
- Less clarity with respect to the scope of any intangible cultural heritage assessment and increased risk of appeals under Commonwealth laws.

### 8.3 'Quick win' opportunities

Based on our review and industry feedback, we outline some key opportunities below that may provide 'quick wins' under the existing NSW planning framework to streamline cultural heritage aspects of a major clean energy project.

#### Opportunity 10: Establish a robust consultation framework

Update longstanding guidance on cultural heritage assessment. In particular, a strong focus should be placed on establishing a comprehensive consultation framework that sets clear processes and timings and expectations with respect to engagement with traditional owners.

#### Implementation

DPE may refresh the investigation and consultation guidance material relating to Aboriginal cultural heritage, as discussed above.

#### Opportunity 11: Assess connection to Country

Establish a clear framework to assess tangible and intangible Aboriginal cultural heritage. The importance of conducting an assessment with respect to Country, alongside archaeological assessment of Aboriginal objects and places, is critical to the proper assessment and approval for clean energy and transmission projects in NSW.

#### Implementation

DPE may refresh the investigation and consultation guidance material relating to Aboriginal cultural heritage, as discussed above.

### 8.4 Longer-term opportunities

In preparing this report, we also considered reform opportunities that may be considered as longer-term goals for government, industry and proponents. A selection of the key goals discussed with industry bodies and clean energy proponents is below.

#### Aboriginal cultural heritage legislative reform

Complete reform of the NPW Act and other relevant legislation to provide a modern framework with improved processes and outcomes for Aboriginal cultural heritage.

#### Strategic native title or land rights agreements

Explore opportunities to allow for proponents to sign up to pre-negotiated outcomes for the relevant land within a broader landscape with traditional owners that deliver partnership opportunities.

## 9 Land and transmission

### 9.1 Overview

Renewable energy projects face challenges when it comes to the securing appropriate land and managing local land impacts. The NSW Government is supporting the development of REZs as centres which combine electricity generation, transmission, storage and systems in concentrated locations.

Transmission projects are subject to a similar regulatory regime in relation to land. However, the complexity of the assessment process is arguably emphasised due to the linear nature and scale of transmission infrastructure.

This section 9 examines the key strengths, challenges and opportunities to achieve better outcomes with respect to land and transmission aspects of a major clean energy or transmission project.

### 9.2 Key strengths and challenges

Based on our legal review of the NSW planning framework and industry feedback, we identify the key strengths and challenges for clean energy and transmission projects in the tables below.

#### Key strengths

- Landowner and neighbour agreements are a possible option to address project requirements and impacts.
- Strong NSW Government support for REZs and related investment.
- Optionality to deliver network connections and transmission lines as part of a State significant project.
- Delivery and suitability of transmission infrastructure is a key focus of EnergyCo.

#### Key challenges

- Securing project site and/or transmission routes, dealing with land tenure type mix, dwelling entitlement and ensuring sufficient consultation.
- Managing interactions with Crown land, native title and Aboriginal land claims.
- Addressing matters relating to cumulative impact assessment in areas of more concentrated clean energy and transmission development.
- Minimising impacts to local communities located on transmission routes during construction and operation, and managing any local infrastructure contribution requirements.
- Maintaining effective and efficient inter-agency coordination.

### 9.3 'Quick win' opportunities

Based on our review and industry feedback, we outline some key opportunities below that may provide 'quick wins' under the existing NSW planning framework to streamline land and transmission aspects of a major clean energy project.

#### Opportunity 12: Strengthen local social licences

Strengthen the social licence of clean energy projects with local communities and landholders to identify suitable project locations and opportunities for coexistence.

##### Implementation

NSW Government and DPE may continue to assist proponents of clean energy and transmission projects to establish and build a social licence in local communities, including through assisting with local council engagement and establishing community benefit sharing arrangements that maintain strong links back to the relevant development through the life of the project.

#### Opportunity 13: Secure land and transmission routes and deliver strategic solutions upfront

In NSW, there are opportunities to explore options for securing land and transmission routes at an early stage that would allow for strategic solutions at scale to resolve expected future impacts relating to proposed development(s) within a similar area, including impacts such as visual and noise, biodiversity offsets, and other matters.

##### Implementation

NSW Government may consider this strategic approach to working with landowners and addressing key concerns or impacts upfront (e.g. visual impacts or dwelling entitlements) in order to streamline the future delivery of projects in the area.

#### Opportunity 14: Address industry feedback on the draft private agreement template

Consider industry feedback on the Draft Private Agreement Guideline and related private agreement template. As a commercial document between private parties, careful consideration must be given to any public guidance on proposed terms and how such terms will be assessed by landowners, proponents, financiers and other stakeholders.

##### Implementation

We expect that DPE will continue to work with industry and proponents in relation to the private agreement template and determine the appropriateness of the proposed approach. If adopted, DPE may need to continue to monitor the model clauses for relevancy and update as required to ensure that they do not impact on bankability for clean energy and transmission projects.

## 9.4 Longer-term opportunities

In preparing this report, we also considered reform opportunities that may be considered as longer-term goals for government, industry and proponents. A selection of the key goals discussed with industry bodies and clean energy proponents is below.

### Adopt a strategic assessment approach (concept plan)

In addition to Opportunity 13 above, a CSSI concept plan pathway could be followed to complete upfront assessments of expect biodiversity, visual and other impacts for the delivery of clean energy and transmission projects within a broader landscape.

This planning approach would allow for impacts within the broader area to be addressed at an early stage and enable developers to deliver clean energy and transmission projects with the relevant area in a streamlined manner as subsequent stages of the approved CSSI concept plan.

## 10 NSW energy and net zero targets demand quick action

This report confirms that the existing NSW planning system has the capacity to deliver short-term outcomes to fast-track the energy transition in NSW.

By adopting simple 'quick wins' identified in our review, NSW can speed up the approvals process while maintaining the thoroughness demanded by the current planning framework for the State.

Our findings demonstrate that 'quick wins' are possible while potential longer-term reforms are discussed by government and industry.

Notably, there are clear opportunities for Commonwealth and NSW governments to work with the clean energy sector to adopt a strategic assessment approach at scale with respect to biodiversity, visual and other impacts.

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