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Clean Energy Investor Group

DELIVERING MAJOR CLEAN ENERGY PROJECTS IN NSW

REVIEW OF NSW STATUTORY PLANNING APPROVALS PROCESSES

1 Introduction

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.

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3 Delivering clean energy projects to achieve net zero

3.1 NSW has adopted staggered targets to net zero

As early as November 2016, with the release of its Climate Change Policy Framework,[1] 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.[2]

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.[3] The Net Zero Act legislates targets to reduce GHG emissions by 50% by 2030, 70% by 2035 and to achieve net zero by 2050.[4] 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.[5]

3.2 The energy transition is essential to decarbonisation

Coal-fired generation is retiring faster than expected, with 60% of capacity withdrawn by 2030.[6] 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.[7]

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;[8]
- construct long-duration storage infrastructure with 2 GW capacity by the end of 2029;[9]

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[1] NSW Climate Change Policy Framework (November 2016).

[2] Net Zero Plan Stage 1: 2020-2030 (March 2020).

[3] Net Zero Act s 8.

[4] Net Zero Act s 9.

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

[6] 2022 Integrated System Plan (AEMO, June 2022).

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

[8] *Electricity Infrastructure Investment Act 2020* (NSW) (**EII Act**) s 44.

[9] EII Act s 44.

- deliver transmission, including REZ network infrastructure and priority transmission infrastructure projects;[10]
- provide payment schemes that compensate landholders for hosting transmission infrastructure;[11]
- 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;[12] 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.[13]

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.

[10] EII Act s 34; Roadmap.

[11] Strategic Benefit Payments Scheme (October 2022).

[12] Energy Savings Scheme (website as at November 2023).

[13] 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
SSD	SEPP or Minister (with advice from the Independent Planning Commission (**IPC**) on the project's significance)	Division 4.7
SSI	SEPP or Minister (with advice from the IPC on the project's significance)	Division 5.2
CSSI	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**.[14]

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**).

[14] 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 Sate 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.[15]

[15] 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	
	Available	*Time limit*	*Available*	*Time limit*	*Available*	*Time limit*
Merits review	Objectors only	28 days	No	-	No	-
Judicial review	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 (**SEARs**)
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 (**DPE**)
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.

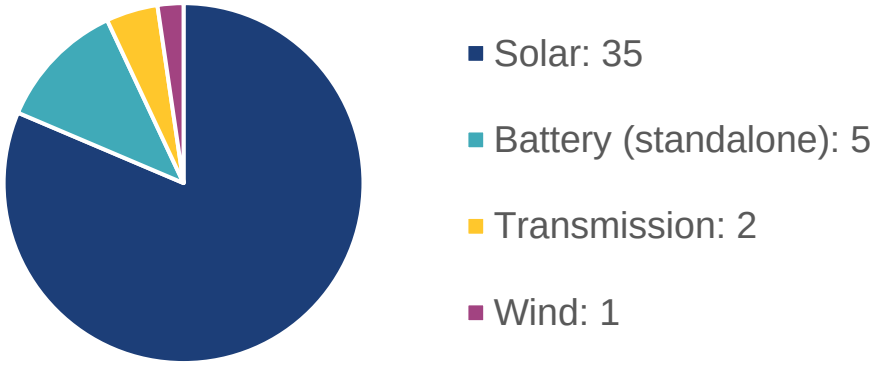
As discussed in this report, there are further opportunities to streamline the NSW planning system to support the urgent rollout of energy infrastructure.

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[16]



[16] HSF Review.

5 State significant planning pathways

5.1 Overview

In NSW, the statutory approval process for clean energy projects in 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
SSD	
• Greater resourcing and support from DPE officers in comparison to obtaining non-State significant development consent under Part 4 of the EP&A Act. • Certain secondary approvals are not required to be obtained (s 4.41, EP&A Act). • Other secondary approvals cannot be refused and must be issued substantially consistent with the SSD consent (s 4.42, EP&A Act).	• Requests for information (**RFIs**) by DPE and other agencies are causing approval delays and costly re-assessment requirements at late stages of the approval process. • Cost and time implications due to informal soft lodgement processes before obtaining SEARs and changing expectations during the assessment process. • Ongoing industry standard of producing long, complex and repetitive EIS documentation that does not following the applicable guidelines for the preparing of an EIS. • 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.
SSI	
• More flexible modification powers and streamlined environmental assessment requirements may be issued. • Lower risk of legal challenge as no merits review appeal rights offered to third parties. • Exemption from Part 3 of the EP&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. • As above for SSD.	• Risk of legal challenge as any person may commence judicial review proceedings within three months. • As above for SSD (bullet points 1 to 3).
CSSI	
• Fastest determination timeframes. • 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. • Development control orders and certain other enforcement action cannot prevent or interfere with an approved CSSI project. • As above for SSD and SSI.	• Limited access to CSSI planning pathway for the clean energy projects, which are delivering a critical State need. • As above for SSD (bullet point 1).

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.[17] 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.

[17] 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.

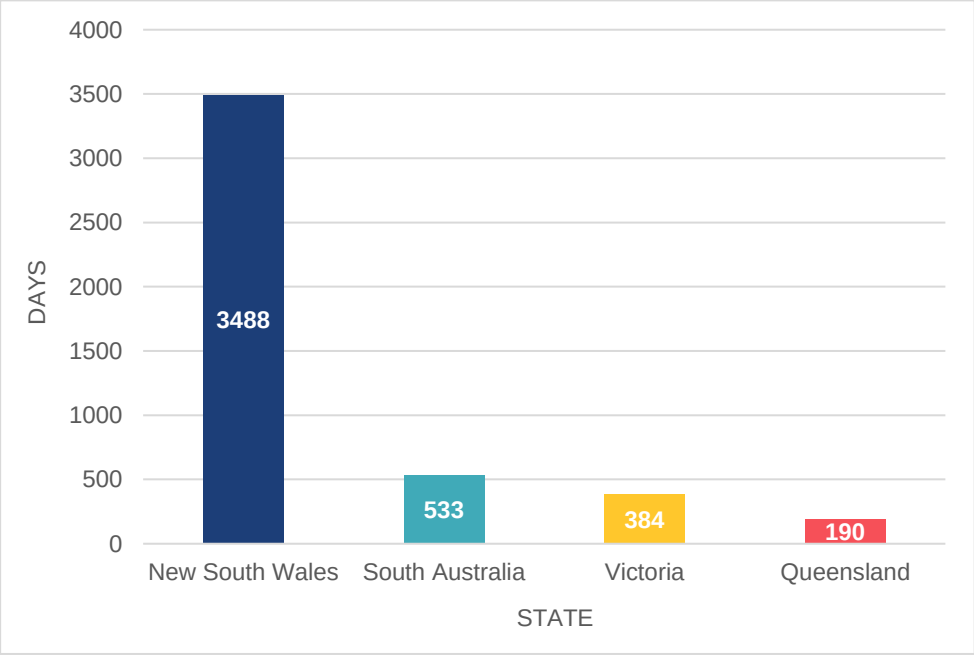
5.5 Longer-term opportunities

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[18] 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[19]



[18] 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).

[19] 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	Key challenges
• 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.	• 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	Key challenges
• 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.	• 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 to 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 a 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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