

Wind farms or coal mines

Which one will be subject to stricter planning controls?

The Victorian Government has begun implementing its election promise to tighten the planning controls that apply to wind energy facilities. Their policy, if fully implemented, is likely to make it harder to build wind farms in Victoria.

How do the proposed changes compare with equivalent planning controls for coal mines, or toxic waste treatment plants, or natural gas extraction? Will it be easier to get approval for clean energy or fossil fuels in Victoria?

The table on the following pages compares the Victorian Government's promised planning laws for wind farms with the existing equivalent controls for four different projects:

- a coal mine;
- a toxic waste treatment plant;
- a natural gas extraction site;
- a desalination plant.

In the case of the toxic waste treatment plant and the desalination plant, our comparison is based on specific cases in which the Environment Defenders Office (Victoria) Ltd has acted.

It shows that under the Government's proposed policy, stricter planning controls will be applied to wind farms than to these polluting projects.

Some comparisons between the Government's wind farms policy and other planning laws:

- A wind farm will not be able to be built within 2km of a home without consent. But a coal mine can be built less than 100m away. For a toxic waste treatment plant, there is no prescribed buffer distance.
- People will be able to claim compensation if a wind farm is built within 1km of their home. But people living within 400m of the Wonthaggi Desalination Plant received no compensation.
- In most cases, local councils get to decide whether or not to approve wind farms in their area. But the Minister has exceptional power to override local councils and impose coal mines or natural gas extraction on communities.
- The list of places where wind farms are excluded from altogether is extensive, but there are no blanket exclusions on where to build a toxic waste treatment plant.

For more information, call the Environment Defenders Office on 1300 336 842 (regional) or 8341 3100 (metro). While all care has been taken in preparing this paper, it is not legal advice, nor is it a substitute for legal advice in individual cases.

	Wind farm ¹	Coal mine	Toxic waste treatment plant ²	Natural gas drilling	Desalination plant ³
How close can it be to your home without your consent?	2km	100m ⁴ The Minister can override this to make it closer.	No mandatory buffer distance ⁵	No mandatory buffer distance ⁶	400m ⁷
Is statutory compensation available to nearby landowners?	Yes For landowners whose property lies within 1km of a wind turbine.	Maybe Only if loss or damage is a direct, natural or reasonable consequence of approving a mine licence. ⁸	No	Maybe Only if loss or damage is a direct, natural or reasonable consequence of approving a mine licence. ⁹	No Only if the plant or pipeline goes over your land. ¹⁰
Who decides whether or not to grant planning approval?	Local council Unless the Minister decides to call it in.	It depends Usually the local council. ¹¹ But the Minister can step in and make that decision. ¹²	It depends Usually the local council, but the Minister for Planning in some cases. ¹³	It depends Usually the local council. ¹⁴ But the Ministers can step in and make that decision. ¹⁵	Minister for Planning In the Wonthaggi case, the Bass Coast planning scheme was amended to allow this.

	Wind farm ¹	Coal mine	Toxic waste treatment plant ²	Natural gas drilling	Desalination plant ³
Are there blanket exclusions from any places?	<p>Yes</p> <p>In or near national or state parks, designated tourist areas, or designated regional population growth corridors.</p> <p>Also Wilson's Promontory; the Mornington and Bellarine Peninsulas; Surf Coast and Great Ocean Road regions; McHarg, Macedon, Dandenong and Yarra Ranges; sections of the Bass Coast.</p>	<p>National parks</p> <p>But the Minister may allow mining in certain cases.¹⁶</p>	<p>No</p>	<p>National parks</p> <p>But the Minister may allow mining in certain cases.</p>	<p>No</p>

¹ Based on the Government's policy in the Liberal National Plan for Planning p 19.

² Based on a contaminated soil treatment facility proposed for the Lyndhurst landfill.

³ Based on the desalination plant built at Wonthaggi.

⁴ *Mineral Resources (Sustainable Development) Act 1990* (Vic) (**MRSDA**) s 45(1)(a)(i), (b). Clause 52.10 of the Victoria Planning Provisions (**VPPs**) requires 500m for coal production, and the EPA recommends 1km, but these requirements are easily circumvented or ignored.

⁵ Not referred to in VPP cl 52.08 or EPA Publication AQ 2/86.

⁶ EPA Publication AQ 2/86 recommends 1km, but this is not binding.

⁷ The nearest home to the Wonthaggi Desalination Plant is 400m away. The owners did not consent. There are 12 residences within 1.5km of the plant.

⁸ *MRSDA* s 85 (1).

⁹ *Petroleum Act 1998* (Vic) s 129.

¹⁰ <http://www.water.vic.gov.au/programs/desalination/landowners/compensation>; *Land Acquisition and Compensation Act 1986* (Vic).

¹¹ VPP cl 52.08-2.

¹² *MRSDA* s 42(7), s 42(8)-(9).

¹³ The Minister for Planning is the responsible authority for this proposal: Greater Dandenong planning scheme.

¹⁴ <http://new.dpi.vic.gov.au/earth-resources/community-information/landholders-info/petroleum>.

¹⁵ *Petroleum Act 1998* (Vic) ss 119-121.

¹⁶ *National Parks Act 1975* (Cth) s 40. There is a facility to exclude valuable agricultural land under s 26B(1) of the *Mineral Resources(Sustainable Development) Act 1990* (Vic), and some protections for residential homes under the planning framework, but these are not blanket exemptions.

