

New requirements for wind farms in Victoria

INTRODUCTION

On 15 March 2011 Amendment VC78 came into effect. Amendment VC78 amends the *Victoria Planning Provisions (VPPs)*, changing the rules and requirements for new wind farm developments in Victoria, and partially implementing one of the new Victorian Government's most controversial election promises.

The rules remove the Minister for Planning (**the Minister**) as the responsible authority for wind farm applications, and restore this role to local councils. They also impose new requirements on wind farm applications, and amend the State Planning Policy Framework (**SPPF**) to encourage greater consideration of the impact of wind farms on local communities.

The EDO understands that the Government may be planning further reform in this area, and invites you to continue to 'watch this space'.

ELECTION COMMITMENT

The new Government's planning policy released before the State election in November 2010, *The Victorian Liberal Nationals Coalition Plan for Planning*, made the following commitment on wind farms:

"A Liberal Nationals Coalition Government will restore fairness and certainty to the planning system for wind farms and will ensure:

- That the placement of turbines will be no less than two kilometres from the nearest home unless a contract between the resident and wind farm developer is agreed;
- The reinstatement of local government as the planning authority for wind farm applications;
- The establishment of a shared payment system for landowners whose properties are within one kilometre of the nearest turbine, as a compensation mechanism for adjacent landholders;
- The establishment of 'no-go' zones for wind farms at places such as Wilson's Promontory, the Mornington and Bellarine Peninsulas, Surf Coast and Great Ocean Road regions, McHarg and Macedon Ranges, Dandenong and Yarra Ranges and sections of the Bass Coast;
- The exclusion of wind farms in or near national and state parks, designated tourist areas and designated regional population growth corridors; and
- The public availability of all data on the energy output of wind farms."¹

These changes, if introduced, would represent the most stringent planning requirements ever applied to wind farms in Victoria. Amendment VC78 is a step toward implementing these promises.

REMOVAL OF THE MINISTER AS RESPONSIBLE AUTHORITY

Amendment VC78 makes local councils the responsible authority for all wind farm planning permits under each Victorian planning scheme.² This removes the previous provision whereby wind farms over 30 MW capacity were referred to the Minister for a decision.

¹ *The Victorian Liberal Nationals Coalition Plan for Planning* p 19.

² VPP cl 61.01.

This amendment is intended to re-emphasise the concerns of the local community in wind farm decisions. It will also impose an extra burden on local councils. DPCD has committed to providing advice and assistance to local government to help them deal with this extra burden.

There are still a number of situations where the Minister will be the responsible authority for a wind farm application:

- for wind farm proposals which are complex or which straddle two local government areas, the local council may request that the Minister decide the application;³
- if the project is designated as of State Significance under Part 9A of the *Planning and Environment Act 1987*(Vic) (**P&E Act**); or
- if the Minister 'calls in' an application, because the decision has been unreasonably delayed, or because the application "raises a major issue of policy and that the determination of the application may have a substantial effect on the achievement of planning objectives."⁴

CHANGES TO THE STATE PLANNING POLICY FRAMEWORK

Amendment VC78 amends the SPPF to encourage greater consideration of the impacts of proposed wind farm developments on local communities.⁵ Responsible authorities must consider the SPPF in making planning decisions, including relating to wind farms.

The amendments to the framework are as follows:

- "[i]n considering proposals for renewable energy, consideration should be given to the economic and environmental benefits to the broader community of renewable energy generation ~~and the effects on the local~~ while also considering the need to minimise the effects of a proposal on the local community and environment.

In planning for wind energy facilities, ~~planning should-~~

~~Facilitate the consideration of wind energy development proposals~~

- ~~Recognise that economically viable wind energy facilities are dependent on locations with consistently strong winds over the year and that such sites may be highly localised.~~⁶

On balance, these changes appear to be relatively minor. It is worth noting that several important parts of the SPPF, like the objective to "promote the provision of renewable energy in a manner that ensures appropriate siting and design considerations are met", and the strategy to "facilitate renewable energy development in appropriate locations", remain.⁷

NEW REQUIREMENTS FOR APPLICATIONS

The amendments to cl 52.32 of the VPPs, which deals specifically with 'Wind Energy Facility' proposals, impose new requirements for planning permits applications for wind farm developments in Victoria.

Impact on dwellings

Applications must now be accompanied by a site and context analysis which includes "[a] plan showing all dwellings within two kilometres of a proposed turbine" for the first time.⁸ According to advice from DPCD, this will allow local councils to ensure that each of the owners of these dwellings and any other "affected parties" are "fully informed" of the proposal.⁹

³ P&E Act s 97C.

⁴ P&E Act s 97B.

⁵ VPP cl 19.01-1.

⁶ VPP cl 19.01-1.

⁷ VPP cl 19.01-1.

⁸ VPP cl 52.32-2.

The Government promised before the election to ensure that “the placement of turbines will be no less than two kilometres from the nearest home unless a contract between the resident and wind farm developer is agreed.”¹⁰ However, the VPPs and Guidelines as they currently stand do not implement this promise. Whether this amendment is intended to replace this commitment, or merely lay the foundations for it, is so far unclear.

New noise standard

The amendments require noise impact assessments to be conducted according to stricter standards than before. They require that the noise impacts be prepared in accordance with the New Zealand Standard NZS6808:2010, Acoustics – Wind Farm Noise (**the new Standard**), including an assessment of whether a “high amenity noise limit” is applicable under section 5.3 of the new Standard.

EDO understands that the new Standard generally imposes a noise limit of 40 decibels (or no more than 5 db higher than pre-existing background noise levels, whichever is greater). DPCD advises that this is consistent with noise limits that have previously applied in Victoria.¹¹ It also establishes a process for imposing more stringent limits in noise sensitive areas — for example, where background noise levels are already particularly low. In these ‘high amenity noise limit’ areas, sound levels during evening and night time should not exceed 35 db (or 5 db above the background noise level, whichever is greater).¹²

Concept plan

Applications must now be accompanied by a design response including, for the first time, “[a] concept plan of associated transmission infrastructure, electricity utility works and access road options”.¹³ According to DPCD, this concept plan “will help local authorities and the wider community gain an improved understanding of the proposed development.”¹⁴

NEW GUIDELINES

The previous *Policy and Planning Guidelines for Development of Wind Energy Facilities in Victoria 2009* (**the old Guidelines**) have been replaced by new guidelines — [Policy and Planning Guidelines for Development of Wind Energy Facilities in Victoria, March 2011](#) (**the new Guidelines**). The new Guidelines are now incorporated in the VPPs (and planning schemes across the State).¹⁵

The new Guidelines are not substantially different to their predecessor. They remove a lot of the Government policy that featured in the old Guidelines, and noticeably reduce the old Guidelines’ emphasis on the importance of renewable energy. For example, where the old guidelines required the responsible authority to have regard to “the Government’s Policy in support of renewable energy development” in considering impacts on landscape and visual amenity,¹⁶ the new Guidelines simply require regard to be given to “wider state and local government planning policy.”¹⁷

Other than that, the new Guidelines have simply been updated to reflect the changes to the VPPs and various other developments (for example, the creation of the Draft National Wind Farm Development Guidelines (July 2010)). DPCD has also updated a number of publications published on its website, outlining [Government agency contacts](#), [relevant internet links](#), and [useful publications and references](#).

⁹ Advisory Note 35, March 2011 p 2.

¹⁰ *The Victorian Liberal Nationals Coalition Plan for Planning* p 19.

¹¹ Advisory Note p 2.

¹² Advisory Note p 2.

¹³ VPP cl 52.32-2.

¹⁴ Advisory Note p 2.

¹⁵ VPP cl 81.01.

¹⁶ old Guidelines p 29.

¹⁷ new Guidelines p 23.

TRANSITIONAL PROVISIONS

Amendment VC78 only applies to new planning permit applications. This is significant, since DPCD advises that there are 26 planning permits in place for wind farm developments which have been approved but which have not yet been constructed.

VC78 includes transitional provisions for applications to expand, amend or extend the time for these existing permits, which effectively exempt these applications from the new rules until 15 March 2012. Specifically, an application to amend, cancel or review a permit granted before 15 March 2011 will continue to be governed by the old rules, and an application for an extension of time for such a permit will not be granted past 15 March 2012.¹⁸

Notably, DPCD advises that these transitional provisions will only apply to applications which cause a material change in the nature, scale or impact of the development.¹⁹ Presumably, this is because the model permit conditions for wind farms, which have been in place since February 2009, allow for some relatively minor departures from the approved plans without the need for approval or amendment of the plans²⁰. However, the terms of the VPPs contain no such limitation.²¹ Further, this latitude in amending a permit would not necessarily apply to any permits granted subject to conditions different to the Model conditions. It is therefore recommended that permit holders for wind farms seek advice before proceeding to amend a planning permit granted before 15 March 2011.

FURTHER CHANGES

The Government's pre-election policy made a number of commitments relating to wind farm requirements which have not been implemented by these changes. Notably, the Government's promise to disallow wind farms in *or near* national parks, state parks, designated tourist areas and regional population growth corridors are not captured by Amendment VC78 or the new Guidelines.²² The EDO understands that further measures to implement these promises and to introduce "further arrangements to support nearby residents" are still to come.²³ We will keep you informed of these changes if and when they happen.

ASK US FOR ASSISTANCE

If you would like further information on the changes to the wind farm rules in Victoria, please contact us. In some cases the EDO can provide free legal assistance to groups and individuals with public interest environmental law issues. The EDO may also be able to help you or your community group engage in the process around the development of further amendments to the rules applying to wind farm proposals in Victoria. Note that we can only provide such assistance if the matter is considered by us to be 'public interest environmental law', and that the EDO considers minimising the emission of greenhouse gases to be in the public interest.

If you would like assistance please contact us and we will let you know whether we can assist. You can call us on **(03) 8341 3100 (metropolitan)** or **1300 336 842 (regional)** if you would like assistance.

¹⁸ VPP cl 52.32-4.

¹⁹ Advisory Note p 2.

²⁰ Conditions 1 and 2 of the Model planning permit conditions for wind energy facilities dated February 2009.

²¹ VPP cl 52.32-4.

²² Note, however, that the new Guidelines do prohibit wind farms on land covered by the *National Parks Act 1975 (Vic)*, and impose new requirements for information relating to nearby national parks, state parks, designated tourist areas and regional population growth corridors to be provided with an application.

²³ Advisory Note p 3.



ABOUT THE ENVIRONMENT DEFENDERS OFFICE (VICTORIA) LTD

The Environment Defenders Office (Victoria) Ltd ('EDO') is a community legal centre specialising in public interest planning and environment law. Our mission is to support, empower and advocate for individuals and groups in Victoria who want to use the law and legal system to protect the environment. We are dedicated to a community that values and protects a healthy environment and support this vision through the provision of information, advocacy and advice.

In addition to Victorian-based activities, the EDO is a member of a national network of EDOs working collectively to protect Australia's environment through public interest environmental law.

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SEEK LEGAL ADVICE REGARDING SPECIFIC CASES

While all care has been taken in preparing this paper, it is not a substitute for legal advice in individual cases. For any specific questions, seek legal advice.

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