

# Chapter 3

## Planning issues

### Introduction

3.1 This chapter deals with issues relating to the planning of wind farms in Australia. These issues cover the lifespan of wind farm developments: the site selection; the feasibility of the project; the planning and approvals process; construction; commissioning and operations; and decommissioning. The committee has received considerable evidence on these matters, the bulk of which has drawn attention to poor planning processes and the lack of effective community consultation.

3.2 Currently, there is no national planning framework for wind farms in Australia: the relevant regulations and laws are within the relevant State environment and planning statutes. These statutes are regulated in an often confusing manner with jurisdictional overlap between state governments and local councils.

3.3 In its interim report, the committee argued that national wind farm planning guidelines are needed, and planning decisions relevant to technical issues must be elevated from local councils to the state government body with the relevant technical expertise. Logically, responsibility for monitoring compliance issues relevant to these technical decisions should also lie with the decision-making body that has the technical expertise. See the following chapter on Monitoring and Compliance for further discussion and recommendations.

### Interim report recommendations relating to planning

#### Recommendation 3

The committee recommends that the Commonwealth Government introduce *National Wind Farm Guidelines* which each Australian State and Territory Government should reflect in their relevant planning and environmental statutes. The committee proposes these guidelines be finalized within 12 months and that the Commonwealth Government periodically assess the Guidelines with a view to codifying at least some of them.

### Implementation of planning processes

3.4 The implementation of planning processes for wind farms has three key elements:

- land use planning frameworks—the planning regime that applies to all large-scale development in the relevant jurisdiction;

- environmental planning frameworks—the regulatory regime to assess technical and environmental issues relevant to wind farms, including the permits required to operate a wind energy facility; and
- the capacity of the relevant authority/authorities to implement these planning and permit frameworks.

3.5 Many submitters have expressed their concern at the lack of consultation by wind farm proponents both before a development application is lodged, and during the development application process.

### *Planning frameworks*

3.6 Land use planning and construction approvals are conducted through local, state and territory planning processes. Planning and approval frameworks for all large-scale or 'significant' developments are different across all jurisdictions in Australia. In some states, individual councils approve and regulate development at a local level, while in other jurisdictions, decisions for larger developments are made at a state level, often by using 'call-in powers' exercised by state ministers with responsibility for planning issues.

3.7 To add to this confusion, planning approvals specific to wind farm development are even more variable. There is a myriad of approval processes relevant to technical issues and environmental impact, both across jurisdictions and even within different levels of government within a state or territory.

3.8 Some jurisdictions have moved to ensure that wind farm approvals are both regulated and approved at a state or territory level, while others allow local councils to make all planning decisions for wind farms. Some states, such as Victoria, have moved the decision making from local councils to state government agencies and then back again, adding to the confusion. Other jurisdictions elevate technical decision-making based on these guidelines to state agencies, while relying on local councils to monitor and enforce wind farms' compliance with operational approvals.

3.9 Proponents of a new wind farm must navigate this confusing array of separate approvals processes. Not only does this adversely impact on the wind farm industry, this process also makes it very difficult for affected communities to engage in the consultation and approvals process for new wind farm proposals. Many of the current legislative frameworks effectively take away the right of communities to appeal.

3.10 Most state governments have either drafted (New South Wales, Queensland) or finalised (Western Australia, South Australia, Victoria) guidelines for wind farm developments.<sup>1</sup> The guidelines cover issues such as setback from existing homes,

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<sup>1</sup> NSW Department of Planning and Infrastructure, *NSW Planning Guidelines: Wind Farms*, December 2011, [http://www.planning.nsw.gov.au/Portals/0/PolicyAndLegislation/NSW\\_Wind\\_Farm\\_Guidelines\\_Web\\_Dec2011.pdf](http://www.planning.nsw.gov.au/Portals/0/PolicyAndLegislation/NSW_Wind_Farm_Guidelines_Web_Dec2011.pdf) (accessed 20 July 2015).

environmental and visual impacts such as noise, blade flicker and electromagnetic interference, aircraft safety, and impacts on birds and bats.

3.11 The committee has received a considerable volume of evidence, by written submission and during hearings, that state-based planning frameworks have significant flaws in a number of areas. Following is a discussion of the planning approvals processes across a few sample states, to give a picture of the complexities and problems faced due to the planning regimes that apply to wind farms around Australia.

### ***Planning frameworks: Victoria***

3.12 The Victorian Government first published the 'Policy and planning guidelines for development of wind energy facilities in Victoria' in 2003. This document has been refined and updated in 2009, 2011, 2012, and April and June 2015<sup>2</sup> to reflect policy changes and to update information.

3.13 In its submission, the Department of Economic Development, Jobs, Transport and Resources summarises the guidelines as follows:

Once lodged, a planning application is advertised to neighbouring properties and referred to relevant authorities. The decision maker then considers the proposal against the relevant planning scheme policies and controls including the particular provision at Clause 52.32 – Wind Energy Facilities. Considerations include noise, visual and landscape impact, vegetation clearance, shadow flicker, aviation safety, and fauna impacts. Following consideration of the planning provisions, referral responses and public submissions the responsible authority will determine the application.

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Queensland Department of State Development, Infrastructure and Planning, *Wind farm state code: Planning guideline – draft for consultation*, April 2014, <http://www.dilgp.qld.gov.au/resources/guideline/draft-wind-farm-state-code-planning-guideline-april-2014.pdf> (accessed 29 January 2015).

Western Australian Planning Commission, *Planning Bulletin – Guidelines for Wind Farm Development*, April 2004, [http://www.planning.wa.gov.au/dop\\_pub\\_pdf/pb67May04.pdf](http://www.planning.wa.gov.au/dop_pub_pdf/pb67May04.pdf) (accessed 29 January 2015).

Renewables SA, *Wind Farm Planning Policy*, <http://www.renewablesa.sa.gov.au/proponents-guide/wind-farms> (accessed 29 January 2015).

Victorian Department of Transport, Planning and Local Infrastructure, *Wind Energy Facilities, website*, <http://www.dtpli.vic.gov.au/planning/planning-applications/more-information-on-permits/wind-energy-facilities> (accessed 30 January 2015).

- 2 Victorian Department of Transport, Planning and Local Infrastructure website, *Policy and Planning Guidelines for Development of Wind Energy Facilities in Victoria*, June 2015, [http://www.dtpli.vic.gov.au/\\_data/assets/pdf\\_file/0011/231779/Policy-and-Planning-Guidelines-for-Development-of-Wind-Energy-Facilities-in-Victoria\\_June-2015.pdf](http://www.dtpli.vic.gov.au/_data/assets/pdf_file/0011/231779/Policy-and-Planning-Guidelines-for-Development-of-Wind-Energy-Facilities-in-Victoria_June-2015.pdf) (accessed 15 July 2015). The most recent version of this policy paper is available here.

Permit applicants and objectors can apply for a review of the decision to grant or refuse a permit application. Applications for review are held before the Victorian Civil and Administrative Tribunal.<sup>3</sup>

3.14 In April 2015, an amendment to planning laws made the Minister for Planning the responsible authority for all new planning permit applications for the use and development of land for the purpose of a Wind energy facility. In addition, the two kilometre buffer zone between wind farms and residential dwellings, introduced by the Coalition State Government in 2011, was reduced to one kilometre.<sup>4</sup>

3.15 These changes were largely in response to a Victorian parliamentary inquiry into renewable energy projects tabled on 25 February 2010.<sup>5</sup> Of particular relevance to this inquiry, the Victorian inquiry recommended:

- the Victorian Planning Minister be the responsible authority for all commercial wind energy facilities;
- a departmental Project Manager be appointed to each renewable energy facility project;
- a Technical Reference Group be established and integrated into the assessment process for all renewable energy facilities;
- standard development approval conditions should be developed by the Department of Planning and Community Development for permit applications for renewable energy facilities;
- Planning Panels Victoria form a small team of members with substantial expertise in considering wind farm applications;
- The Minister for Planning be responsible for the monitoring and enforcement of conditions set out in all wind farm permits and post development plans;
- Strategic regional plans should be developed by the Department of Planning and Community Development to assist local councils and communities manage the cumulative impacts of multiple, concurrent major developments, including wind energy facilities; and

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3 Victorian Department of Economic Development, Jobs, Transport and Resources, *Submission 112*, p. 6.

4 Victorian Department of Environment, Land, Water and Planning, *Planning Advisory Note 61*, April 2015, [http://www.dtpli.vic.gov.au/data/assets/pdf\\_file/0006/273291/AN61-Amendment-VC124-Changes-to-wind-energy-facility-provisions-and-vegetation-provisions.pdf](http://www.dtpli.vic.gov.au/data/assets/pdf_file/0006/273291/AN61-Amendment-VC124-Changes-to-wind-energy-facility-provisions-and-vegetation-provisions.pdf) (accessed 15 July 2015).

5 Victorian Parliamentary Environment and Natural Resources Committee, *Inquiry into the Approvals Process for Renewable Energy Projects in Victoria*, <http://www.parliament.vic.gov.au/57th-parliament/enrc/inquiries/inquiry/44> (accessed 20 July 2015).

- Regional Development Victoria fund local councils impacted by wind farm and renewable energy projects, to establish community engagement frameworks.<sup>6</sup>

3.16 Some of these recommendations were accepted and legislated by the government through amendments to Victorian planning law in April 2015. However, many of the problems that have been continuously raised by local councils, communities and affected residents, do not appear to have been addressed. The Victorian parliamentary inquiry found:

Local councils advised that they do not currently have the capacity, expertise and resources to act as the responsible authority for wind farm projects of less than 30 megawatts. Councils identified the cumulative impacts of wind farms and monitoring and enforcement arrangements as significant issues.<sup>7</sup>

3.17 Despite this finding, the new planning regime in Victoria makes the state Minister for Planning the responsible authority to issue permits for new wind farms, but local councils are the responsible authority for enforcement and compliance with the permit.<sup>8</sup> The cost to local councils and ratepayers under this arrangement was raised as an issue of particular concern in the submission by Moyne Council:

Council is concerned that it will not be adequately financed by the State Government for planning permit compliance and that the general Moyne community should not have to subsidise the compliance of a major energy project.<sup>9</sup>

3.18 Submitters expressed frustration in the difficulties created in a complaints system with overlap between state and local governments:

Nobody is responsible, because, when I first made a complaint, I went to the state office in Ballarat. They said, 'We've got no-one here to know how to force compliance', and we got the same statement from the council that it is the department of planning's problem.<sup>10</sup>

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6 Victorian Parliamentary Environment and Natural Resources Committee, *Inquiry into the Approvals Process for Renewable Energy Projects in Victoria*, pp. XXIII – XXV, [http://www.parliament.vic.gov.au/images/stories/committees/enrc/renewable\\_energy/report/Recommendations.pdf](http://www.parliament.vic.gov.au/images/stories/committees/enrc/renewable_energy/report/Recommendations.pdf) (accessed 20 July 2015).

7 Victorian Parliament Environment and Natural Resources Committee, *Inquiry into the Approvals Process for Renewable Energy Projects in Victoria*, p. XV, [http://www.parliament.vic.gov.au/images/stories/committees/enrc/renewable\\_energy/report/Executive\\_summary.pdf](http://www.parliament.vic.gov.au/images/stories/committees/enrc/renewable_energy/report/Executive_summary.pdf) (accessed 20 July 2015) (accessed 20 July 2015).

8 Victorian Department of Environment, Land, Water and Planning, *Committee Hansard*, Melbourne, 9 June 2015, p. 8.

9 Moyne Shire Council, *Submission 460*, p. 5.

10 Mr Noel Dean, *Committee Hansard*, Melbourne, 9 June 2015 p. 20.

3.19 As outlined in the *Capacity of authorities* section below, even in the event local councils are willing to accept an enforcement and compliance role, they lack the expertise and funding required by this important role. A more detailed discussion of monitoring and compliance issues is undertaken in Chapter 4 of this report.

3.20 Furthermore, the Moorabool Council states that the back and forth movement between state and local government as to who is the responsible authority has added to confusion about who is responsible for the issue of permits and ongoing monitoring of compliance. The Council is also concerned where the State Planning Minister has extended permits without consultation with Council.<sup>11</sup>

3.21 Former Cape Bridgewater resident Ms Joanne Kermond noted in her submission:

Some seven years after the commissioning of the Cape Bridgewater Wind Farm, neither the council (which incorporated the Portland Wind Energy Project into its planning scheme in 2004) nor the Minister (who issued the permit against the recommendations of the VCAT panel and a government appointed panel) are prepared to formally accept the responsibility for the enforcement of noise conditions attached to Portland Wind Energy Project's planning consent.

The Victorian Minister for Planning has never formally determined that he is satisfied that the Cape Bridgewater Wind Farm has met compliance with condition 13 and so Pacific Hydro still has the unmet obligation to demonstrate that the power station is compliant with the noise conditions set out in its conditionally issued planning consent.

It is my understanding that no authority has determined Cape Bridgewater Wind Farm's compliance, no authority is prepared to take responsibility for the enforcement of noise conditions attached to the Portland Project's planning permission, and no authority has made itself available to seriously address our concerns. We are simply told to direct our complaints to the wind farm company.<sup>12</sup>

3.22 Glenelg Shire Council told the committee that the Council does not have the technical capacity to enforce conditions of consent and nor does it have the authority to do so to the extent that the Minister is satisfied. The Minister reasons that Council is now the responsible authority for Portland Wind Energy Project because the PWEP was incorporated into the Glenelg Planning Scheme. Although the Minister for Planning is unwilling to accept responsibility for noise conditions of the Portland Wind Energy Project, he was quite prepared to use his powers to intervene, amend the

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11 Moorabool Shire Council, *Submission 375*, p. 1.

12 Ms Joanne Kermond, *Submission 211*, p. 5.

permit and extend the same permit's expiry date to assist the developer to obtain finance which would allow Stage 4 of the project to be completed.<sup>13</sup>

### ***Planning frameworks: South Australia***

3.23 South Australia is the largest producer of wind energy in Australia. The South Australian government website notes that 'as of June 2014, South Australia hosts the bulk of the nation's installed capacity'.<sup>14</sup> As the South Australian Government noted in its submission:

South Australia has established itself as the nation's leader in wind energy investment having attracted 41% of the nation's installed capacity. Indeed, South Australia has an international reputation, and if it were a nation state would be second only to Denmark in its amount of wind energy penetration.<sup>15</sup>

3.24 On 18 October 2012, the Minister for Planning approved the Statewide Wind Farm Development Plan Amendment (DPA).<sup>16</sup> Under the DPA, planning and development assessment is encouraged to remain under existing local Council processes, although the SA Government notes that 'all wind farm development applications in South Australia are referred to agencies for comment to assist with the development assessment'. It adds:

Once a wind farm development application is lodged with the assessment authority there are statutory public consultation time periods and the ability for community members to make submission to the assessment authority on the development.<sup>17</sup>

3.25 However, some councils have expressed dissatisfaction with this process. The District Council of Yankalilla submitted that:

The State agencies (Environment Protection Authority (EPA) and Dept. Health) seem to be poorly set up to help Local Government get another perspective on sometime complex technical information about windfarm proposals. In the past it has not been possible to get their expert staff to

13 The committee has in its records an email dated November 2013 from the Victorian Department of Planning and Community Development Pacific Hydro to Ms Sonia Trist. The email notes that the second extension of the expiry date was done to allow stage 4 of the Portland Wind Energy Project to be completed.

14 South Australian Government, *Wind energy in SA*, <https://www.sa.gov.au/topics/water-energy-and-environment/energy/energy-supply-and-sources/renewable-energy-sources/wind-energy/wind-energy-in-sa> (accessed 5 June 2015)

15 South Australian Government, *Submission 59*, p. 1. Presumably, 'penetration' refers to a per capita basis.

16 See: [https://www.sa.gov.au/\\_data/assets/pdf\\_file/0020/17660/DPA\\_Minister\\_Approved\\_Statewide\\_Wind\\_Farms\\_DPA\\_Gazetted\\_18\\_October\\_2012.PDF](https://www.sa.gov.au/_data/assets/pdf_file/0020/17660/DPA_Minister_Approved_Statewide_Wind_Farms_DPA_Gazetted_18_October_2012.PDF)

17 South Australian Government, *Submission 59*, p. 7.

brief Councils /Development Assessment Panels during the rather constrained timeframe for processing Development Applications.<sup>18</sup>

3.26 The DPA identifies 'rural type zones' in the state which are classed as Category 2 developments and not subject to third party appeal rights. The exception to this is where a turbine falls within two kilometres of a non-associated dwelling or township type zone. If a turbine falls within two kilometres, then the wind farm will be classed as Category 3 and subject to third party appeal rights.<sup>19</sup>

3.27 Furthermore, the DPA limits public consultation requirements to:

...public consultation with neighbours but reserves widespread public consultation for those proposals that include one or more turbines located less than 2000 metres from: an existing or approved dwelling; tourist accommodation; or potentially incompatible zone such as an airfield, residential or township zone.<sup>20</sup>

3.28 In addition, the DPA established that wind turbines:

- need to be setback at least 1km from non-associated dwellings and tourist accommodation; and
- need to be setback at least 2km from defined urban and township zones.

3.29 Responses from local councils in South Australia to this planning regime have not been positive. The Southern and Hills Local Government Association, which comprises seven South Australian local Councils submitted that:

Although the vast majority of our member Councils have not been party to or processed any Wind Farm Development applications it is generally felt the policies contained in the Development Plan following the State Amendment referred to earlier provide little guidance for Councils and Landowners.<sup>21</sup>

3.30 Enforcement of conditions such as noise levels is a confusing joint responsibility of local councils and the South Australian Environment Protection Authority. Submitters have stated that the agency is poorly funded and unable to properly conduct its compliance function.<sup>22</sup>

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18 Southern and Hills Local Government Association, *Submission 85*, p. 8.

19 Government of South Australia, Renewables SA, *Wind farm Planning Policy*, <http://www.renewablessa.sa.gov.au/proponents-guide/wind-farms> (accessed 5 June 2015).

20 South Australian Government, *Submission 59*, p. 7.

21 Southern and Hills Local Government Association, *Submission 85*, p. 7.

22 Regional Council of Goyder, *Committee Hansard*, Adelaide, 10 June 2015, p. 34.

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3.31 The committee received considerable evidence from residents in regional areas of South Australia expressing concerns with planning processes in South Australia.<sup>23</sup>

3.32 Ms Nicki Morgan wrote in her submission:

The State's "fair and expeditious planning system" comes at the cost of a total loss of rights for those who must live near wind power stations. There are no provisions for fair and reasonable objections to be made or acted upon when they are made. Only the Councils of the Adelaide metropolitan area, the Barossa and McLaren Vale have wind power stations banned – the entire rest of the state (including one proposed within 50 metres of the Barossa Council area) is open with no reasonable objection acceptable by the authorities. Indeed, even Councils are powerless when they oppose them themselves. I am uncertain what the government means by "fair".<sup>24</sup>

3.33 Ms Jackie Rovensky, who also made a submission to the South Australian Parliamentary inquiry, wrote in her submission:

...the SA Government changed its Planning Regulations to give virtually unrestricted access to the vast majority of the State, and to assist this process removing the Right of Appeal to approvals for these projects from its citizens. As a consequence of involvement of the industry in decision making there is no evidence of State Governments making any adequate Planning Regulations to manage community concerns, rather they have created planning regulations which favour the industry and ignore community concerns.<sup>25</sup>

3.34 Mrs Karen Wilson referred in her submission to the Trustpower Palmer Wind Farm development:

My husband and I own a property adjacent to the proposed Palmer Wind Farm. We will be surrounded by up to 50 x 165 [meter] tall wind turbines ranging from 2.5 km to 10km...

We now live in fear that this will go ahead. We fear for our health, we fear for our safety in regards to bush fires as we live in the Adelaide Hills which is a high bushfire zone. We also fear that our property will be devalued. Trustpower have held public consultations and right from the beginning they have given us the impression its [sic] a done deal so we may as well get used to it. The Mid Murray Council have been intimidating to say the least. The SA state government have changed legislation to make sure these wind farms are approved. We have no third party right of appeal.<sup>26</sup>

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23 See *Submissions 24, 56, 60, 89, 92, 108, 118, 122, 127, 159, 165, 231, 243, 246, 247, 332, 390, 392, 397, 418, 438, 441 and 464*. See also *Proof Committee Hansard*, Adelaide, 10 June 2015, pp. 32–64

24 Ms Nicki Morgan, *Submission 247*, p. [1].

25 Ms Jackie Rovensky, *Submission 89*, p. 5.

26 Ms Karen Wilson, *Submission 122*, p. [1].

### ***Planning frameworks: Queensland***

3.35 Currently, local governments are the responsible authority for wind farm development approvals, assessing these proposed developments against their local planning schemes. However, there are no Queensland guidelines specific to the assessment of new wind farm developments or the expansion of existing wind farms.<sup>27</sup>

3.36 Local councils have expressed frustration with the existing process for assessing wind farm proposals. In its submission, the Tablelands Regional Council identifies the problem with these arrangements:

Small regional councils are generally under-resourced, and lack the financial and technical capabilities and expertise required to deal with complex wind farm developments, or the associated monitoring and compliance. These difficulties are compounded by the state government's failure to develop and implement enforceable state-wide policies and standards for the wind farm industry, and to address the complexity and contradictions embedded in the existing state noise regulatory environment (as they apply to wind farms).<sup>28</sup>

3.37 The Queensland Government submitted that it will change the responsible authority to a state-based agency, but did not indicate when that change would occur:

Future applications for wind farm development are to be assessed by the State Assessment and Referral Agency (SARA). SARA is the single lodgement and assessment point for all development applications where the state has jurisdiction, under the Sustainable Planning Act 2009 (SPA) — Queensland's principle (sic) planning legislation.<sup>29</sup>

3.38 To support the new assessment process, the Queensland Government says in its submission that:

The department is preparing a draft Wind Farm State Code (the Code) which will be incorporated into the State Development Assessment Provisions (SDAP). The SDAP is a prescribed document that sets out matters of interest SARA may have regard to when assessing development applications. A Draft Wind Farm State Code Planning Guidelines (the Guideline) is also being developed to support the Code. The purpose of the Guideline is to assist proponents in preparing a thorough development application for a new or expanded wind farm.<sup>30</sup>

3.39 In subsequent evidence presented to the committee's Cairns hearing, the Department of Infrastructure, Local Government and Planning stressed that the proposal to make SARA the responsible entity to assess wind farm developments has

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27 Queensland Government, *Submission 413*, p. 2.

28 Tablelands Regional Council, *Submission 158*, p. 1.

29 Queensland Government, *Submission 413*, p. 2.

30 Queensland Government, *Submission 413*, p. 2.

not yet been considered or endorsed by the new Queensland Government. If the proposal for centralised planning approval is not implemented, the Department suggests the draft wind farm code could be used by local councils as a suggested code or guideline in assessing wind farm development proposals.<sup>31</sup>

3.40 However, there is no clarity as to whether this proposed regime will be similar to the new regime put in place in Victoria, where planning approvals are elevated to a state level, but responsibility for monitoring compliance with the approvals is left up to local councils. In its submission, the Tablelands Regional Council finds it unclear whether it or the state will be responsible for associated compliance and enforcement, and raised concerns that ratepayers could be responsible for significant enforcement and compliance costs.<sup>32</sup> The council noted that in terms of the costs of compliance for the Windy Hill wind farm:

It is estimated to have directly cost taxpayers over \$200,000 in acoustic expert costs and legal fees, and a further \$50,000 in indirect costs such as officers' time.<sup>33</sup>

3.41 Several submitters have criticised the role of the Queensland Government in relation to the Mount Emerald Wind Farm development. The Tablelands Wind Turbine Action Group told the committee:

Acknowledging the inadequacy of the planning scheme, the Council made several amendments (Temporary Local Planning Instruments) [TLPI] to assist in the wind farm assessment. However, the Queensland Government diluted the TLPIs in order to expedite the wind farm planning approval. The Queensland Government has also relaxed many of the standard regulatory arrangements for the Mount Emerald developers. For instance, the developers will not be required to have a permit to clear native vegetation under Queensland's Nature Conservation (Wildlife) Regulation 2006 because the works will be considered "for the purposes of electrical works". (When these Regulations were developed, electrical works of this scale were carried out by government agencies in response to public need for power. In this case, additional energy is not required, the developer is building turbines purely to take advantage of Federal Government regulations which assist renewable energy suppliers.) The Queensland Government has also withdrawn the requirement for the turbines to comply with remnant vegetation habitat regulations under the Vegetation Management Act 2009, and has refunded the developers' assessment fee.<sup>34</sup>

3.42 The Tablelands Regional Council also highlighted the higher cost to councils of development decisions under the current planning regime:

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31 Queensland Department of Infrastructure, Local Government and Planning, *Committee Hansard*, Cairns, 18 May 2015, p. 16.

32 Tablelands Regional Council, *Submission 158*, p. 2.

33 Tablelands Regional Council, *Submission 158*, p. 4.

34 Tablelands Wind Turbine Action Group, *Submission 230*, p. 6.

If council decides something then the developer, if it does not agree with that approval, can appeal that decision to the Planning and Environment Court, which can be a very costly process for the council. In a ministerial call-in situation, there is no right of appeal. That is the difference—council remains exposed to the consequences of their decision; the minister does not.<sup>35</sup>

### ***Planning frameworks New South Wales***

3.43 The committee received evidence from Mr Robert Griffin and Mr Alwyn Roweth, both landholders near the proposed Flyers Creek wind farm in NSW. They related their experience of dealing with the proponent, Infigen Energy, and the NSW Department of Planning.<sup>36</sup>

3.44 The committee has serious concerns about the manner in which the landholder contracts were signed and the quality of information that was made available to the landholders at the time of signing the contracts. The committee notes that the contracts with the three landholders have expired and that the host landholders do not wish to be part of the project. The committee also notes that the proponent has attempted to force an extension of the contracts on Mr Griffin, Mr Roweth and Mr Neville Obourne using a *force majeure* clause. Further, the NSW Department of Planning has:

- (a) confirmed to them in writing that the Department has not caused any of the delays that the proponent purports; and
- (b) granted a further extension on the already deferred commencement conditions, thereby placing Mr Griffin, Mr Roweth and Mr Obourne under significant pressure from the proponent.

3.45 The committee expressed its concern that the aforementioned gentlemen are not adequately resourced with legal representation. The committee also notes the intricacies of changes over recent years to the planning statutes in NSW. These changes have in effect taken away the community's right of appeal and have been the subject of recent investigations by Independent Commission Against Corruption (ICAC).

### **Capacity of local councils**

3.46 Many submissions from different local government areas have questioned the capacity of local councils to implement a robust planning approval process for developments of significance, such as windfarms. Many of these submissions have come from local councils themselves:

Small regional councils are generally under-resourced, and lack the financial and technical capabilities and expertise required to deal with

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35 Tablelands Regional Council, *Committee Hansard*, 18 May 2015, p. 30.

36 See: Mr Robert Griffin, *Submission 81*; Mr Alwyn Roweth, *Submission 182*.

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complex wind farm development, or the associated monitoring and compliance.<sup>37</sup>

3.47 Issues raised around the capacity of local councils to manage development applications of wind farms include:

- their lack of staff to properly run a development application process for large scale developments;
- their lack of technical expertise to assess developments, or to monitor compliance with planning or permit conditions;
- the lack of funds to litigate non-compliance;
- the absence of planning laws that adequately regulate large-scale industrial development; and
- the timeframes for consultation and feedback in local planning laws are not suitable for developments of such significance as they have been developed to address residential or smaller scale non-residential development.

### ***Technical expertise***

3.48 Moyne Shire Council submits that the burden on local councils to engage in the technical assessment of development applications is too high:

There is considered to be an imbalance in the process as the applications are supported by technical and expert reports covering a wide range of topics many beyond the expertise provided by the functions of local government. To adequately consider, address and respond to either a planning permit application, a referral from the Minister for Planning or to an EES [Environmental Effects Statement] process, creates a large and expensive resource burden on both Council and the local community.<sup>38</sup>

3.49 Moyne Shire Council proposes a solution, citing the approach taken in assessing the development proposals of other kinds of major industrial and infrastructure projects. The council submits that those processes have a layered approach to approvals, with planning permit approval assessed first by local councils, then works authority or aspects relating to technical issues undertaken by State Government or its agencies, which are more technically resourced.<sup>39</sup>

3.50 The Pyrenees Shire Council cites similar concerns:

...resourcing issues will arise due to the significant amount of officer time and specialist technical skills required to assess complex matters such as blade flicker, cumulative impacts and noise assessments.

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37 Tablelands Regional Council, *Submission 158*, p. 1. This position is echoed in submissions from other local councils. See *Submissions 47, 85, 375, and 460*.

38 Moyne Shire Council, *Submission 460*, p. 4.

39 Moyne Shire Council, *Submission 460*, p. 4 and pp 6–7.

There will also be a need to engage specialist consultants to assist with the assessment of noise reports.<sup>40</sup>

3.51 The Pyrenees Shire Council recommends the State Government resource regional offices of the Environmental Protection Agency with wind farm coordinators with access to technical experts. The council further recommends these regional offices should be responsible for ensuring compliance with wind permit conditions.<sup>41</sup>

### ***Financial burden***

3.52 Local councils have submitted that the financial burden of both assessing development applications and ongoing monitoring of compliance is very high. Moyne Council points out state-regulated planning fees are set to a maximum planning permit fee of \$16 130, yet the council estimates their costs in assessing a wind farm proposal to be in the vicinity of \$250 000.<sup>42</sup>

3.53 Moorabool Council puts forward a similar position to Moyne Council on the cost to council, stating that rates income generated per tower is not adequate compensation for councils' costs.<sup>43</sup>

3.54 Individual submitters have pointed out that this financial burden is actually borne by local residents, who pay for local councils costs through rates:

The ongoing issues at Windy Hill place a considerable burden on staff resources, as well as significant legal costs that must be borne by the Council (and therefore ratepayers).<sup>44</sup>

3.55 Another key cost raised by councils is the damage to roads caused by heavy vehicles accessing small country roads during construction of wind farms:

There has been no offer to the TRC [Tablelands Regional Council] by the developers to make good damaged roads, nor any commitment of any kind in respect of future costs to the TRC. The TRC is aware of the complaints of the Moyne Shire Council to effect that millions of dollars in road damage has occurred. It is also aware that the TRC road system is not sufficient to withstand the expected number and weight of movements from the Palmerston Highway to the site.<sup>45</sup>

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40 Pyrenees Shire Council, *Submission 47*, p. 2.

41 Pyrenees Shire Council, *Submission 47*, p. 3.

42 Moyne Shire Council, *Submission 460*, p. 5. This view is echoed by the Regional Council of Goyder, *Committee Hansard*, Adelaide, 10 June 2015, p. 33 and p. 35.

43 Moorabool Shire Council, *Submission 375*, p. 3.

44 Tableland Wind Turbine Action, *Submission 230*, p. 14.

45 Ms Marjorie Pagani, *Submission 340*, p. 4. This concern is echoed by Moorabool Shire Council. See *Submission 375*, p. 2 and Regional Council of Goyder, *Committee Hansard*, Adelaide, 10 June 2015, p. 33.

3.56 Local residents have also raised the impact to local roads as a concern. The McMillan family proposed a solution whereby wind farm developers would be required to place funds in trust to repair damage to roads, so that this financial burden did not fall to ratepayers.<sup>46</sup>

### ***Lack of resources***

3.57 Submitters pointed to a lack of resources that local councils were able to put towards assessing development applications as well as compliance monitoring.

3.58 The Tarwin Valley Coastal Guardians (TVCG) noted in its submission that the South Gippsland Shire Council was under-resourced to fulfil its compliance responsibilities in relation to the Bald Hills Wind Farm:

In December, 2013 TVCG formally petitioned SGSC asking it to be diligent and proactive in its role as lead regulatory agency for the BHWEF planning permit. We were not confident that Council had dedicated any additional resources to support this role.<sup>47</sup>

3.59 Later in the submission, TVCG states:

We believe the project's size and the complexity of its development plans required SGSC to assign a full time compliance officer to monitor the project, document observed breaches, liaise with local residents and initiate necessary enforcement action. This never happened. Over the full twelve-fourteen months of construction, we are aware of SGSC senior officers visiting the site four times.

TVCG members started asking that they do so in January, 2014. By September 2014 TVCG members, local residents and their lawyers had lodged approximately ten formal written complaints to SGSC and attended four or more meetings, including two with the entire elected Council, to report alleged breaches and voice concern about SGSC inaction.<sup>48</sup>

### ***Inappropriate local planning laws***

3.60 Submitters discussed the problems faced in using local development planning laws to assess and approve large scale industrial developments such as wind farms. One issue raised was that local planning laws do not allow for assessment of developments that impact more than one council region:

Wind farms are large developments, and while they are a land use covered by the planning system, we see them as being a quite different land use to our normal planning permit applications, on the basis that they are usually a

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46 McMillan Family, *Submission 29*, p. 5.

47 Tarwin Valley Coastal Guardians, *Submission 45*, p. 28.

48 Tarwin Valley Coastal Guardians, *Submission 45*, p. 29.

development over multiple titles of land, over hundreds of hectares of land stretching for kilometres.<sup>49</sup>

3.61 This problem was highlighted by the case of the Mount Emerald Wind farm, where 90 per cent of people within 5 kilometres of the proposed were excluded from the development decision-making process because they lived in a different local government area to the wind farm site.<sup>50</sup>

3.62 Another problem raised by submitters, is that there is no capacity in local planning laws to assess cumulative impacts—each development application must be assessed as a stand-alone application.

The issue of assessing the cumulative effect from large projects is an important issue, given the potential for greater landscape, visual and noise impacts.

Appropriate triggers need to be introduced (based on combined project size and their proximity to each other) that should be used as a mechanism for the Planning Minister to call in such proposals to ensure a co-ordinated process is followed in assessing such proposals. Without amendments to current state guidelines there is no capacity for a joint consideration of combined impacts from large projects.<sup>51</sup>

## Consultation

3.63 Submitters have discussed problems faced by residents and local communities during the process of consultation undertaken by wind farm proponents, both during the initial scoping phase as well as the consultations during the formal planning approval phase. Serious concerns have been raised with the manner in which various wind farm companies have engaged with local communities when seeking prospective wind farm hosts, as well as a lack of quality and accurate information provided during formal community consultations.<sup>52</sup>

### *Pre-application consultation*

3.64 Local resident submitters raised concerns with how wind farm companies enter into what they describe as secret negotiations and discussions with hosts:

Host farmers were required to sign confidentiality agreements that emphasised lack of disclosure with neighbours, the beginning of the

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49 Moyne Shire Council, *Committee Hansard*, Melbourne, 9 June 2015, p.44.

50 Tablelands Regional Council, *Committee Hansard*, Cairns, 18 May 2015, p. 34.

51 Pyrenees Shire Council, *Submission 47*, p. 3. This concern was also raised in *Submissions 119m, 227e, 232a, and 326*.

52 Concern with consultation was raised in a number of submissions. In particular see *Submissions 32, 108ss, 109, 180, 195, 198, 206, 208, 225, 230a, 232, 252, 281a, 285, 314, 316b, 336, 339, 340, 394 and 415*. This issue was raised at all public hearings with community participants.

dreadful wedge that has riven our community, overwhelmingly against this initiative.<sup>53</sup>

3.65 The quality and detail of information provided to communities at the pre-proposal stage was raised. Submitters have also discussed the level of information provided to prospective wind farm hosts as being difficult to gauge, due to non-disclosure rules in agreements. Other submissions discussed the lack of quality information provided to non-host residents at the pre-approval stage had negative impacts on the later community consultation phase:

In Yankalilla's experience in assessing a Development Application (DA), we received substantial public comment and our Development Assessment Panel (DAP) went on to hold 2 or 3 meetings just to give sufficient time for presenters to make their verbal (and Audio Visual) presentations in relation to their objections. It would have been good if a series of pre-application public information sessions could have been given by the proponent of the windfarm application in the lead up to the actual formal DA process.<sup>54</sup>

3.66 Some submissions raised concerns over the manner in which wind farm companies interacted with individuals. The McMillan family describe being pressured to sign a contract:

After this interview with them in December 2013 we were receiving 18-20 phone calls per day pushing us to sign their contract. This went on for 5 months, we got caller ID on our phone line so that we could just let the calls go through to the answering service, as well as an alarm on our driveway due to them continually calling in to get the contract.<sup>55</sup>

3.67 Mr David Mortimer noted a similar negative experience of dealing with wind farm developers in his submission:

As a recent turbine host, we have first hand experience of the way in which wind farm developers work in securing willing turbine hosts and creating compliant governments at all levels.

Once a wind farm developer has chosen a suitable area of land, he begins to infiltrate the community and win the hearts and minds of the locals with promises of community funding, and endearing themselves with the prospective hosts with one on one sessions around the kitchen table with strong requests not to discuss matters with neighbours or any others. These days, it is common in the up front "option to lease" document to include a confidentiality or gag clause preventing any such communication.<sup>56</sup>

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53 Heartland Famers, *Submission 183*, p. 67. This was echoed in Submission 214.

54 Southern and Hills Local Government Association, *Submission 85*, p. 7.

55 McMillan Family, *Submission 29*, p. 1.

56 Mr David and Mrs Alida Mortimer, *Submission 24*, p. [2].

3.68 Mr Richard Paltridge also submitted that gag clauses negatively impact on community consultation:

There had been no public/community discussions in public between residents in the district about the project, even though it is now evident Acciona had been speaking with landholders since around 2005 as they were seeking those willing to accept payment to have turbines on their land. I was not one of those approached. They had also held Community Group meetings, but it is unknown which groups and how many are supported by other than a few of the local community.

That not many realised what was happening and how advanced the work on the project proposal is directly a result of all those contacted by Acciona were required not to speak publically about the project or their meetings with Acciona.<sup>57</sup>

3.69 The South Australian Government submitted that the positive practices of Trustpower enables non turbine hosts to benefit financially from wind farm developments:

An example of good practice in South Australia is the Trust Power Palmer Wind Farm development. The company sends regular newsletters to stakeholders, has undertaken community meetings and employed a community liaison person who lives in the local area to assist with information dissemination. They have developed the concept of neighbourhood agreements whereby non-host residents who live nearby a wind farm, but who are not hosts, can benefit financially from the development.<sup>58</sup>

3.70 The committee heard further evidence from Trustpower Ltd that they had not had any operational concerns raised on any of their projects in New Zealand or South Australia. They attributed this to the combination of strong community consultation processes, particularly in the pre-lodgement phase, combined with financial benefits for neighbouring landowners.<sup>59</sup>

### ***Post application consultation***

3.71 There was a wide range of evidence presented on problems encountered by individuals, community groups and local councils during the consultation phase mandated by planning laws. Concerns included the paucity of accurate information provided by proponents, the lack of real community engagement, too-short consultation phases compounded by communities finding out about developments well into the planning state instead of near the beginning. Some submitters also identified a tendency for some councils to have already decided in favour of a development prior to the public consultation phase.

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57 Mr Richard Paltridge, *Submission 367*, pp. 1–2.

58 South Australian Government, *Submission 59*, p. 8.

59 Trustpower Ltd, *Committee Hansard*, Adelaide, 10 June 2015, pp. 25–27.

3.72 Submitters have presented evidence that wind farm proponents use various strategies to reduce the capacity of people to organise themselves into groups that improve community advocacy during the consultation phase. The Bodangora Wind Turbine Awareness Group wrote that the wind farm company preferred to meet with individuals rather than groups:

Infigen (the proponent in this instance) have refused to meet with the BWTAG or any groups of neighbouring property owners, despite numerous requests. They (the proponent) prefer 'one on one meetings'.<sup>60</sup>

3.73 Heartland Farmers had a similar experience and submitted:

Suzlon representatives were asked to meet with the Heartland Farmers in January this year. This meeting was refused as Suzlon failed to recognise the Heartland Farmers as a legitimate group and demanded the names and details of the individual members.

Suzlon have failed to attend open meetings that are not controlled by them, failed to respond to telephone messages, faxes and messages on their blogs.<sup>61</sup>

3.74 Heartland Farmers also provided an experience of one member in their submission:

The first we knew of how many would be on my boundary was when the maps were released by Suzlon on the Information Day in January 2013. At these meetings, Suzlon's representatives controlled the interaction with our farmers by allowing only 25 to listen to a presentation. Their tactic was to not allow questions from the floor and asked everyone to move to the back of the room and ask questions one---on---one rather than use an open style forum which would have then shared information amongst the wider group. These meetings were held in Curramulka, Port Vincent and Port Julia, the smallest towns, venues with limited space. Why did they choose small venues? Why didn't they use town halls in Maitland and Minlaton? Because that way they could limit the numbers to 25 people at a time. They knew that a farmer---filled Minlaton Town Hall with an open forum would be a PR disaster.<sup>62</sup>

3.75 The McMillan family found that the public consultation events were tightly controlled by the wind farm proponents:

Their public consultation has been non-existent to the extent that the only meeting they organised was only open to pro-wind people by email invitation, where your email had to be shown at the door to be able to get in. If you were not pro-wind you could not get in.<sup>63</sup>

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60 Bodangora Wind Turbine Awareness Group, *Submission 227*, p. 3.

61 Heartland Farmers, *Submission 183*, p. 68.

62 Heartland Farmers, *Submission 183*, p. 67.

63 McMillan Family, *Submission 29*, p. 1.

3.76 Evidence from a number of submitters questioned the community survey results that are published by wind farm proponents which claim community support for the project:

Melbourne based Suzlon describe the support in the community as overwhelmingly good. One could only say this from Collins Street, having spent no time consulting a community that we know has overwhelmingly voted to stop this project. The Council of this community, along with the coastal progress associations of Black Point, Port Julia and Sheoak Flat have unanimously rejected this proposal at recent meetings.<sup>64</sup>

3.77 Ratch-Australia (RATCH) presented evidence that the pre-development community survey of the Mount Emerald wind farm found that 70 per cent of people were supportive of the project.<sup>65</sup>

3.78 However, the Tablelands Regional Council contends that the survey was framed to provide a positive response to the proposed wind farm, as it included many respondents living a long distance from the wind farm.<sup>66</sup> The survey demographics shows that 400 people in total were surveyed: 59 per cent of respondents lived over 15 kilometres from the proposed site and only 19 people surveyed (5 per cent) lived less than 5 kilometres from the proposed site.<sup>67</sup> Conversely, the Tablelands Regional Council states that around 2 500 people live within 5 kilometres of the proposed site, with a total of around 3 500 people within 10 kilometres.<sup>68</sup>

3.79 In comparison, the Tablelands Regional Council quoted results from a community-citizen funded survey:

When the community citizens got together and did a very professional survey, which was open and transparent and available to RATCH for comment and criticism, 700 residential addresses within five kilometres were posted to, and the reflection there was: 91.7 [per cent] did not support, 3.5 [per cent] did support and neither way was 4.8 [per cent].<sup>69</sup>

3.80 Other submissions have highlighted a problem with the quality and accuracy of information provided during the consultation phase:

The Community Engagement Process has been less than satisfactory. We had received information from the initial developers, we never received information from Acciona. Indeed our residence, as many other local homes

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64 Heartland Farmers, *Submission 183*, p. 69. See also *Submissions 89, 230, 316, and 459*

65 Ratch-Australia, *Committee Hansard*, Cairns, 18 May 2015, p. 6.

66 Tablelands Regional Council, *Committee Hansard*, Cairns, 18 May 2015, p. 29.

67 The survey can be found on the Ratch-Australia website at: [http://ratchaustralia.com/mt\\_emerald/mewf\\_eis\\_docs.html](http://ratchaustralia.com/mt_emerald/mewf_eis_docs.html). For demographics see [Vol 3 – App. 9 – Stakeholder Consultation Program Appendix C](#), p. 40, (accessed 20 July 2015).

68 Tablelands Regional Council, *Committee Hansard*, Cairns, 18 May 2015, p. 27.

69 Tablelands Regional Council, *Committee Hansard*, Cairns, 18 May 2015, p. 29.

were not on their maps, even though most of them have been there for a minimum of thirty years.<sup>70</sup>

...

The level of community consultation undertaken by developers has been abysmal and any that was undertaken generally ignored community concerns. There has been a less than honest approach by developers in relation to noise, shadow, blade flicker affects and visual amenity on residents.<sup>71</sup>

...

The developers have attempted to minimise any opposition by withholding information, incorrectly presenting data and rejecting community concerns about the project. Throughout the planning process, they have tried to keep details as vague as possible and have avoided any meaningful stakeholder engagement.<sup>72</sup>

...

In their proposal RATCH says that they have contacted the volunteer fire brigade and have permission from us to access all our water supplies and get help from us if they should have a fire. My father is the secretary, and no-one has ever been contacted by RATCH with regard to firefighting on the mountain. It shows that they write what they think people want to hear, and they are not actually talking to the people on the ground.<sup>73</sup>

3.81 Some submitters provided evidence that communities had only 10 days in which to respond to development proposals, and stated that this was not enough time for people to research a complex issue and write comprehensively of their concerns.<sup>74</sup> This was compounded by the situation where projects were well into the late planning stages before communities became aware a wind farm was being proposed in their area.<sup>75</sup> It reaffirms the point made in evidence by the Queensland Department of Infrastructure, Local Government and Planning official: 'the department formed the view that we cannot say no to any wind farms'.<sup>76</sup>

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70 Ms Bernadette Janssen, *Submission 195*, p. 2.

71 Upper Hunter Landscape Guardians Inc, *Submission 58*, p. 2.

72 Tablelands Wind Turbine Action, *Submission 230*, p. 9.

73 Ms Hewitt-Stubbs, *Committee Hansard*, Cairns, 18 May 2015, pp. 58–59.

74 Mr Richard Paltridge, *Submission 367*, pp. 2–3. This was also raised by The District Council of Yankalilla within *Submission 85* from the Southern and Hills Local Government Association.

75 Mr and Mrs David and Maureen Coleman, *Submission 262*, p. 1. Late notification of communities to a proposed wind farms was also discussed by Mr Tony Edney, *Submission 214*, p. 2.

76 Mr Greg Chemello, *Proof Committee Hansard*, 18 May 2015, p. 24. See paragraph 2.43.

### ***Consultation Case Study: Mount Emerald Wind Farm***

3.82 The Mount Emerald Wind Farm development was proposed by the partnership of RATCH Australia and Port Bajool. The site is private land on the plateau adjacent to the Mt Emerald / Springmount area, approximately halfway between Mareeba and Atherton, five kilometres west of Walkamin.<sup>77</sup> RATCH is proposing to build 63 wind turbines generating up to 189MW of power from this site. The towers will be approximately 80 to 90 metres high with approximately 50 metre blades, utilising 3 MW machines.<sup>78</sup>

3.83 On 24 April 2015, the Queensland Government approved the development application for the Mount Emerald Wind Farm. The Deputy Premier and the Minister for Infrastructure, Local Government and Planning, the Hon. Jackie Trad MP, said:

I have listened first-hand to the community's concerns regarding the proposed development, particularly in relation to potential noise, traffic and environmental issues. As part of the approval, the State requires the proponent, Mount Emerald Wind Farm Pty Ltd, to comply with a number of strict conditions, including daytime and night time noise limits which are equal to, or better than, standards in other states like Victoria and South Australia.<sup>79</sup>

3.84 In explaining the decision to approve the project, the Queensland Government stated:

- the approval also includes a condition requiring all turbines to be located at least 1.5km from any existing dwelling;
- the applicant is also required to submit detailed traffic and environment management plans for approval prior to construction commencing; and
- the approval also includes conditions requiring the applicant to undertake community consultation prior, during and post construction to ensure any community concerns are addressed, as well as the establishment of a hotline and complaints register to ensure any community concerns are appropriately managed.<sup>80</sup>

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77 Mount Emerald Wind Farm, <http://mtemeraldwindfarm.com.au/> (accessed 10 May 2015).

78 Mount Emerald Wind Farm, <http://mtemeraldwindfarm.com.au/> (accessed 10 May 2015).

79 The Hon. Jackie Trad MP, Deputy Premier of Queensland and Minister for Infrastructure, Local Government and Planning, 'Wind Farm to contribute to FNQ energy security', Media Release, <http://statements.qld.gov.au/Statement/2015/4/24/wind-farm-to-contribute-to-fnq-energy-security> (accessed 24 April 2015).

80 The Hon. Jackie Trad MP, Deputy Premier of Queensland and Minister for Infrastructure, Local Government and Planning, 'Wind Farm to contribute to FNQ energy security', *Media Release*

3.85 The inquiry has received evidence from numerous submissions concerned with the community consultation processes for this development. In his submission, Mr Ian Parker states:

Ratch has presented its case at all legislative levels and to the media as a benign and much needed investment in Far North Queensland, making out that it has met all requirements demanded in law for such a development. Yet in doing so it has lied over many issues. Among them claiming to have canvassed and received favourable local opinion on its proposal. It never did so in the areas contiguous to the wind turbine site.<sup>81</sup>

3.86 Ms Jennifer Disley and Mr Jack Krikorian submitted they were approached in 2007 by the Port Bajool developers who sought to sell them 100 acres of land. They describe RATCH and Port Bajool's behaviour as 'unethical and condescending'.<sup>82</sup> They note that 'the assessment on Community Impact has never been done. This is a part of normal application process and has been bypassed'.

3.87 Ms Disley and Mr Krikorian also offered the following criticisms of their experience with the consultation process:

I personally invited RPS Consultant, David Finney to my property on 5 separate occasions, so that I could show him our community and the number of enterprises which employ large numbers of employees. His response, "I know your road, I drove down it once". As locals we found this contemptuous.

On following community development guidelines for windfarms, Port Bajool stated that they had done letter drops of their newsletters. We do not have a rural delivery service here, and we do not have letter boxes. The local Postmistress has never been given any information from the wind farm developers....

Politicians and media have always been told that there is only a handful, or 5-6 people who object to the wind farm. The action group has an emailing list hundreds of people long for those objectors in the area who want to keep up with the information.

Ratch conducted via a Melbourne Firm, a phone survey regarding the wind farm. Their survey did not include local people to the wind farm. One third of the people questioned resided over 20 kms away. No one on Channel Road was interviewed, i.e. some of the most impacted people. With over 100 residents on Channel Road it is surprising they could not find one person to contact. 80% of people surveyed said they knew nothing of Mt Emerald...

John Morris and Jim Noli visited a few of the neighbouring farmers. They stated they would get back with the information sought. To date there has never been a second visit or information offered.

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81 Mr Ian Parker, *Submission 236*, p. 1.

82 Ms Jennifer Disley, *Submission 290a*, p. 6.

During some council meetings, despite Ratch stating they were open and transparent, council sessions were closed and the public had to leave. I have been shut out of one of their meetings during the public session as were all other members of the public.

3.88 Ms Krista Watkins, a resident of Walkamin, wrote in her submission:

We had in fact been completely lied to, given false information by the proponent and in no way shape or form had the community been advised, consulted or provided information. We had been privy to the lies and deceit due to the venue of the "meetings". We only researched the project ourselves because a good Samaritan informed us that we might want to research it ourselves.<sup>83</sup>

3.89 The committee has received evidence from a number of submitters relating to RATCH and the Mt Emerald wind farm development. John and Grace Cargan, in their submission, stated that 'RATCH Australia, in an attempt to be transparent, put the original development application on their website but when we started asking questions they removed it'.<sup>84</sup>

3.90 Expectations that the development would not impact local agriculture have not been followed through with by RATCH or its representatives. This specifically relates to the aerial spraying industry:

At that time we expected to be presented with a draft written assurance that our ability to service our customers would not be affected by the wind farm development, however this did not eventuate.<sup>85</sup>

3.91 In its submission, the Tablelands Wind Turbine Action (TWTA) Group suggests that the developers have not engaged in good faith with the community stating that 'ongoing betrayal and disrespectful behaviour [has] destroyed our community's trust in the Mount Emerald developers'.<sup>86</sup> TWTA further submits:

- there has been no consultation about fundamental changes to the project, (e.g. number of turbines and sizes of turbines);

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83 Ms Krista Watkins, *Submission 244*, p. 1.

84 Mr and Mrs Jon and Grace Gargan, *Submission 236*, p. 1.

85 Mr Mark McDonald, *Submission 223*, p. 2. The submitter raises the issue of turbulence and the unknown impacts this will have on spraying operations. See also: Ms Marjorie Pagani, *Submission 340*, p. 6. This submitter contends that the wind farm will lead to 'curtailments of plant disease control, and of overspray' in addition to 'light aircraft dangers, and possible restrictions on further airport development'.

86 This approach has been noted by other submitters. Ms Krista Watkins, *Submission 244*, p. [1]. Ms Watkins noted that the proponents were telling people in 2012 that they 'were planning to put "a couple of wind turbines, way back over the mountain range, you won't hear them or see them" ... We had in fact been completely lied to, given false information by the proponent, and in no way shape or form had the community been advised, consulted or provided information.'

- the EPBC Act referral documents were released for community consultation over the Christmas period;
- there has been a misrepresentation of the number of receptors to government;
- there has been a misrepresentation of 'surveys' to demonstrate support for the project that is not apparent;
- there has been a lack of engagement on community concerns and 'denigration and rejection' whenever valid issues have been raised; and
- there have been extraordinary claims made by the proponents including that:  
Some prospective buyers were told by Port Bajool they would not see or hear the wind farm because "sound travels upwards" and they signed away both their rights to object, and their rights to compensation from the developer.<sup>87</sup>

3.92 TWTA notes that 'attempts to buy the community should be banned', citing the following examples:

- The developers sponsorship of the Mareeba Chamber of Commerce; the Chamber supports the wind farm.
- Port Bajool are Executive Members of Advance Cairns at a cost of \$20 000 per annum; Advance Cairns supports the Mt Emerald wind farm as a regional priority.
- The developers have proposed sponsoring a community benefit fund for \$200 000 per annum. There is a concern this will bias the decision making process for the project approval.
- The developers offered Tolga State School \$10 000 in the early stages of project scoping. This donation was refused on the basis that 'schools are places for teaching and learning'.<sup>88</sup>

### ***Consultation frameworks***

3.93 Generally, community consultations for development approval are requirements under the relevant planning provisions in each state or territory. Some jurisdictions, such as Victoria, have additional consultation requirements specific to wind farm developments. The committee notes the reported widespread inaccuracy of community consultation in all States.

3.94 The Victorian Government first published the 'Policy and planning guidelines for development of wind energy facilities in Victoria' in 2003 and was last updated in 2015 to reflect policy changes and to update information. In its submission, the

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<sup>87</sup> Tablelands Wind Farm Action, *Submission 230*, pp 9–11.

<sup>88</sup> Tablelands Wind Farm Action, *Submission 230*, pp 9–11.

Department of Economic Development, Jobs, Transport and Resources summarises the guidelines as follows:

The guidelines encourage proponents to undertake pre-application engagement with decision makers and the community. They provide clear information for prospective wind farm hosts about the planning process under the *Planning and Environment Act 1987*. The information is targeted for use by proponents, decision makers and the community on the planning approval process, matters considered by decision makers, and to provide links to other information sources. It also includes model permit conditions to provide consistency.<sup>89</sup>

3.95 The Clean Energy Council has also prepared guidelines for wind farm development proposals. They have developed a guide to best practice community engagement for the wind industry, and a guide for communities on the steps to expect in a wind farm development project.<sup>90</sup> However, both the Victorian Government and the Clean Energy Council guidelines are not enforceable.

3.96 However, the ACT Government has developed a mechanism to ensure quality consultation is financially rewarded. Such a mechanism could be replicated in other jurisdictions. In its submission, the ACT Government outlined a method it used to incorporate community engagement criterion into the assessment of proposals submitted to its 2014/2015 wind auction.

The community engagement criterion accounted for twenty per cent of the assessment score of each wind auction proposal. Proposals that were able to demonstrate good community engagement practices throughout all stages of their development were assessed favourably against this criterion.<sup>91</sup>

3.97 The committee's view is that improvements to community consultation processes are urgently required across all jurisdictions, and a mechanism to ensure compliance must be incorporated into the National Wind Farm Guidelines, as outlined later in this chapter.

### **Improvements to planning processes**

3.98 A large volume of evidence has been provided to this inquiry, outlining significant problems encountered by local councils, residents and wind farm proponents in the development approval process for wind farms.

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89 Victorian Department of Economic Development, Jobs, Transport and Resources, *Submission 112*, p. 6.

90 Clean Energy Council, *Committee Hansard*, Melbourne, 9 June 2015, p. 2. These two guides are available on the Clean Energy Council website, <http://www.cleanenergycouncil.org.au/technologies/wind-energy.html> (accessed 20 July 2015).

91 ACT Government, *Submission 12*, p. 2.

3.99 Different jurisdictions are taking different approaches: in some places local councils are responsible for all aspects of development approval including sources technical consultants. In other states, councils are provided technical support from state governments. While some jurisdictions have moved to elevate development decision-making to a state agency level, monitoring and compliance enforcement of state agency-made development decisions are left to local councils. Where state agencies are making development decisions, often there is no input sought from councils regarding their knowledge of local region development constraints or needs.

3.100 Moyne Council recommends a two tiered approach, where local council grants planning approval, but there is also an approval to operate. This second approval process would be the mechanism to assess technical aspects, and would also be the appropriate mechanism to conduct monitoring and compliance. The council also recommended:

...there is a role for the Commonwealth to set the standards but I think the actual enforcement and meeting of those standards could best be dealt with maybe through a state agency.<sup>92</sup>

3.101 The Clean Energy Council argued that planning for wind farm development should remain with the state governments:

Certainly in our view the states have worked hard over the years to evolve their planning schemes as they relate to our sector.<sup>93</sup>

I think consistency in approaches across jurisdictions is something that we generally welcome as a principle. I think it can make things more straightforward from an industry perspective and from a community perspective. But, as I said, I think fundamentally that is a question for the regulators in each of those jurisdictions to pass judgement.<sup>94</sup>

3.102 The committee's view is that it is clear from the range of evidence presented that no single jurisdiction in Australia has yet developed an appropriate system of decision-making for planning approvals of wind farms. Such a system would ensure that aspects relevant to local knowledge, such as traffic impacts and facilitating community consultation would be the responsibility of local councils, while technical aspects of evaluating development proposals would be the responsibility of the state-level agency with the appropriate technical expertise.

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92 Moyne Shire Council, *Committee Hansard*, Melbourne, 9 June 2015, p.45. The proposal for a two-tiered planning and operational permit system has been made by Mrs Michelle Grainger, Manager Planning, Moyne Shire Council, *Committee Hansard*, Melbourne, 9 June 2015, p. 44.

93 Clean Energy Council, *Committee Hansard*, Melbourne, 9 June 2015, p. 3.

94 Clean Energy Council, *Committee Hansard*, Melbourne, 9 June 2015, p. 4.

## National wind farm guidelines

3.103 There are no official national regulations or guidelines relating to the planning and development approval of wind turbines in Australia. National Wind Farm Guidelines (National Guidelines) were first proposed nearly a decade ago and were developed by the former Environment Protection and Heritage Council of Australia and New Zealand (EPHC), now replaced by the Council of Australian Governments National Environment Protection Council.

3.104 The draft National Guidelines were released for public consultation in 2010.<sup>95</sup> These guidelines were not mandatory, but were intended to encourage improvements in state and territory processes for assessing wind farm proposals by clearly outlining the key principals and issues for consideration both by proponents and decision makers during the development approval process. The draft National Guidelines provided advice ranging from detailed best-practice methods for impact assessment, to short guidance notes:

| Detailed best-practice methods         | Short guidance notes         | Issues not covered                                  |
|--|------------------------------|---|
| Wind turbine noise                     | Aircraft safety and lighting | Vegetation clearance                                |
| Visual and landscape impacts           | Blade glint                  | Soil disturbance/erosion                            |
| Birds & bats                           | Risk of fire                 | Terrestrial fauna impacts other than birds and bats |
| Shadow flicker                         | Heritage                     | Other ecological impacts                            |
| Electromagnetic interference (EMI)     | Indigenous heritage          | Traffic management                                  |
| Community and stakeholder consultation |                              | Construction and engineering standards              |
|  |                              | Social and economic impact on local community       |

3.105 In its 2012 inquiry, *The Social and Economic Impact of Rural Wind Farms*, the Senate Community Affairs References Committee made recommendations regarding the National Guidelines. The committee considered the National Guidelines could 'provide for greater transparency and consistency for planning for wind energy facilities.'<sup>96</sup>

95 Council of Australian Governments former Standing Council on Environment and Water, *Future of the national Wind Farm Guidelines*, , <http://www.scew.gov.au/resource/future-national-wind-farm-development-guidelines> (accessed 29 January 2015).

96 Senate Community Affairs References Committee, *The Social and Economic Impact of Rural Wind Farms*, p. 49, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Completed\\_inquiries/2010-13/impacruralwindfarms/report/index](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/2010-13/impacruralwindfarms/report/index) (accessed 20 July 2015).

3.106 In its response to the inquiry report, the former Australian Government did not accept the recommendation to redraft the National Guidelines. The former Australian Government went further, and announced the EPHC would cease further development of the National Guidelines, on the grounds that:

Jurisdictions have developed, or are currently developing, planning application, assessment and approvals processes within their own planning frameworks to manage community concerns about wind farm developments such as turbine noise, shadow flicker, electromagnetic interference and impacts on landscapes and wildlife.<sup>97</sup>

3.107 It is not a coincidence that progress at the state and territory level to develop robust wind farm development frameworks has also faltered. The nature of evidence presented to this inquiry shows that where progress has been made, it has not resulted in assessment, monitoring and compliance frameworks that are robust enough to alleviate negative impacts on the communities surrounding wind farm developments.

### **Committee view**

3.108 By the sheer weight of submissions to this inquiry alone, some from the regulatory decision-makers themselves, it is clear that current planning frameworks have failed to address community concerns, or to create nationally consistent wind farm development standards to give certainty to residents that the precautionary principle is being applied.

3.109 It is clear that there is an ongoing role for the Australian Government to play in the development of a consistent, transparent and sustainable regulatory framework for the development, monitoring and compliance of wind farms. Such a framework would have the benefit of:

- providing certainty to the wind farm industry of standards that must be met in development proposals;
- providing nationally consistent industry standards that does not favour or hinder industry investment in any one state or territory;
- assisting regulators to apply nationally consistent decision making on the planning, construction and operation of wind farms'
- assisting in more consistent and transparent monitoring and compliance of operating wind farms; and
- providing greater transparency to communities on the potential impact of new wind farm proposals, as well as a more easily understood framework for community generated compliance complaints.

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97 Council of Australian Governments former Standing Council on Environment and Water, *Future of the national Wind Farm Guidelines*, <http://www.scew.gov.au/resource/future-national-wind-farm-development-guidelines> (accessed 29 January 2015).

3.110 In its interim report, the committee recommended the Commonwealth Government finalise the National Guidelines within 12 months, which each state and territory should reflect in their relevant planning and environmental statutes. The interim report recommended the Commonwealth periodically assess the National Guidelines with a view to codifying some of them.<sup>98</sup>

3.111 The committee has since deliberated further on the significant volume of evidence presented to this inquiry—that previous attempts to develop national consistent guidelines and planning frameworks has failed and the current proposals for state level wind farm development assessment is neither robust nor sustainable.

3.112 The committee is therefore of the view that the National Guidelines for a two-tiered wind farm approvals process to ensure local councils have authority for local development issues, and the relevant state agency is the decision-making authority for environmental impact issues.

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98 Senate Select Committee on Wind Turbines, *Interim Report*, June 2015, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Wind\\_Turbines/Wind\\_Turbines/Interim\\_Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Wind_Turbines/Wind_Turbines/Interim_Report) (accessed 20 July 2015).