

WESTWIND ENERGY PTY LTD

ABN 94 109 132 201



Friday, 1 May 2009

The Hon Justin Madden
Minister for Planning
Level 17
8 Nicholson Street
EAST MELBOURNE VIC 3002

By email

Submission to *Modernising Victoria's Planning Act*

Dear Mr Madden

WestWind Energy Pty Ltd thanks you for the opportunity to submit to the above review.

Our attached submission responds to a number of the questions in the paper *Modernising Victoria's Planning Act - A discussion paper on opportunities to improve the Planning and Environment Act 1987 – March 2009*.

We note that the review focuses on the operation of the *Planning and Environment Act 1987*. It does not consider matters of policy, process or the operation of the Victoria Planning Provisions. As such our submission has been tailored to respond to elements relating to the Act, in the context of the approval process for wind energy facilities. Feedback on the operation of other elements of Victoria's planning process will be raised in the future, should the opportunity arise.

Should you have any specific questions on WestWind's submission, please contact Mr Phil Burn, Project Developer on (03) 5421 9977 or burn@w-wind.com.au .

Yours sincerely

Tobias Geiger
General Manager



MODERNISING VICTORIA'S PLANNING ACT - SUBMISSION BY WESTWIND ENERGY PTY LTD.

INTRODUCTION

WestWind Energy Pty Ltd (WestWind) is an Australian company dedicated to the development, construction and operation of wind farms. The company benefits from the shared experience of the WestWind Group in Germany - an established and successful wind farm developer and operator. WestWind has already identified and secured a number of potential wind farm sites in Australia that are ready for development now and into the future.

As a company WestWind is about to commence construction of its 64 turbine Mt Mercer Wind Farm. Our 64 turbine Lal Lal wind farm is awaiting approval and the development approvals process will commence shortly for a number of other sites. In addition to our combined experience WestWind staff have been individually involved in a number of wind farm developments in Victoria.

WestWind was invited by Invest Victoria to establish a business in Victoria. In addition, WestWind was attracted to Victoria primarily because of:

- a supportive planning policy being to *'promote the provision of renewable energy including wind energy facilities in a manner that ensures appropriate siting and design considerations are met'*
- the Victorian Renewable Energy Target (VRET) scheme;
- wind resources; and
- grid infrastructure.

WestWind currently employs ten staff at its two regional offices in Gisborne and Mt Helen (Ballarat). The company plans to double this number of staff within the next few years.

RESPONSE TO SPECIFIC QUESTIONS IN THE DISCUSSION PAPER.

PLANNING PERMITS

Should the scope of planning legislation be widened to include other matters?

- The current scope of the legislation is appropriate.

Are the objectives of planning in Victoria still relevant?

WESTWIND ENERGY PTY LTD

ABN 94 109 132 201

- Still generally relevant.
- Suggested additional objectives (or re-word) are:
 - “to facilitate development which minimises the release of atmospheric carbon, methane and other greenhouse gasses.”
 - “to facilitate development which considers known impacts of climate change.”

Should the Responsible Authority have more discretion in deciding who should be notified in what manner, and how long should be allowed for submissions?

- Not more discretion but significantly more guidance. The Act currently refers to ‘material detriment’ as the threshold where notice of a planning application must be given. As a threshold, this still seems appropriate. However, **in practice**, notice is often given to those whom a responsible authority believes may suffer any detriment and to those who may have a general interest. Responsible authorities have become more conservative with the extent of public notice.
- With our Wind Energy Facilities (WEF) blanket public notice requirements are often applied (such as 3km to 5km from a WEF boundary) rather than a logical and consistent assessment of landowners who may have the potential to suffer material detriment.

Should the term be changed from objection to submission?

- Yes, ‘submission’ reflects the modern terminology and is a neutral term when compared to ‘objection.’ People do lodge submissions in support of WEFs and this should be reflected by the Act. **However, we need to ensure that planning does not become a popularity contest between submissions which support and those which oppose.** Planning must remain a clinical process of implementing and applying policy.
- Practically, will a change in the terminology mean anything? People who are content with a proposal are less likely to put pen to paper in support of a specific project than those who oppose.

Should the responsible authority have a greater discretion to reject an objection?

- Yes. We understand and support people’s right to raise legitimate concerns with regard to our projects. We also want to ensure that communities are fully aware of our projects and not misinformed.
- The Act should enable responsible authorities to reject:

- **Petitions.** Petitions mean nothing in a planning context and other elements of the notification / objection process (such as the ability to be heard in person by an independent third party [planning panel or VCAT]) are purpose built for planning.
- **Pro-forma** and pro-forma like objections.
- Objections with **insufficient detail.** Examples exist where objections have been accepted and processed without addresses and even without names.
- **Irrelevant** or **unclear** objections. See points below.

Should an objector be required to provide more specific information about how they might be affected by a proposal in their objection?

- It would be a significant regulatory burden for responsible authorities to ‘follow up’ on objections which are unclear. However, a responsible authority should be able to **reject outright** any objections which do not meet current requirements of Section 57 (2) (i.e. reasons for their objection and how they would be affected).
- One of our projects incurred an objection from a landholder living over 70km away. How can this person honestly argue that they will be affected by the grant of a permit? In addition to this many vocal objectors will reside well away from proposals - plus 5km, 7km etc.
- Examples of **irrelevant** grounds for objection will often include: efficiency of technology; impact on property values; powerlines, lack of consultation, residential density; compensation; low frequency vibration, inability to store electricity, tax subsidies and impact on livestock.
- Grounds such as impact on property values and compensation have been dealt with long ago by the planning system, yet objections citing these grounds continually pop up. Same again in relation to powerlines. Powerlines generally do not form part of the permit applications for WEFs and are generally exempt from requiring a permit. Consultation for WEFs already exceeds the requirements of the Act. Grounds such as low frequency vibration, inability to store electricity, tax subsidies and impact on livestock are **nonsense**.
- Such objections have a significant administrative burden on governments and industry. Such objections also divert attention from ensuring relevant grounds are considered. For example, the objector discussed above submitted to the independent planning panel for over one hour and spent additional time cross examining expert witnesses. At the hearing are; three panel members, local government staff and representation, proponent staff and



WESTWIND ENERGY PTY LTD

ABN 94 109 132 201

legal representation, DPCD staff, expert witnesses etc, other submitters waiting to be heard, all listening to absolutely nothing about how the proposal would affect the landholder.

An objection form?

- Not required. When public notice is given, owners and occupiers are generally advised to state the reasons for their objection and how they would be affected by the grant of a permit. This should be straightforward enough. An objection 'form' could encourage additional objections rather than assisting with the process.

STATE SIGNIFICANT PROJECTS

Would there be benefits in creating a specific planning process for the assessment of State Significant projects?

- In the context of the current system, the Minister's 'call in' provision for projects over 30MW is critical for the implementation of State planning policy and the development of wind energy in Victoria. To some extent the call in provision, assessment against the guidelines and review by independent panel has morphed into a specific process for WEF.
- The call in is there to specifically reflect the 'Government's commitment in support of wind energy development.'
 - However, the major problem with this process is timing. The industry wide average is approximately 17 months from lodgement of a planning permit application to a decision. WestWind's average is Mt Mercer - 18 months and Lal Lal – 13 months thus far.
- Unlike other permit applications it is not possible seek VCAT's determination on an application where a decision has not been made within the prescribed time.
- There is anecdotal evidence to suggest that decisions are being made faster where WEF permit applications are assessed by local government (under 30MW). This includes the time taken for VCAT review.
- It is suggested that there could be significant time savings:
 - by applying clear timeframes where the Minister calls in an application for a WEF. As is the case with elements of the Environment Effects Statement (EES) process;
 - with regard to appointing an independent panel and date for hearing; and

WESTWIND ENERGY PTY LTD

ABN 94 109 132 201

- when a panel's recommendation is considered by DPCD and the Minister.

What process should be followed for deciding on projects are of State significance?

- For WEFs the current call in process should be used as a basis, should any change be proposed.

What is the most suitable process of evaluating and deciding State significant projects?

- With regard to WEFs the 30MW threshold to determine State significance seems appropriate. Given the average turbine size is currently 2 Megawatts (MW) and heading towards 3MW it may be worth increasing the call in threshold to 50MW. Other options could include a project value threshold or number of turbines etc.
- In the case of WEFs criteria has already been developed - *Policy and Planning Guidelines for development of wind energy facilities in Victoria*. WEFs which meet the *Policy and Planning Guidelines for development of wind energy facilities in Victoria* should result in grant of a permit.

Who can best decide these matters – should all decisions be made by the Minister or could some proposals be decided by a Development Assessment Committee?

- Minister for Planning. See points below.

Could specified types of proposals (such as windfarms over 30MW) more effectively be decided by a Development Assessment Committee? (p 38 discussion paper)

- Probably not. Much more information would be required on Development Assessment Committees (DAC) before we could offer informed comment. However some initial comments / concerns are provided below.
- There are concerns with the metropolitan model of DACs being applied to WEFs. In particular the inclusion of local government representatives on the DAC. This makes sense with regard to residential developments however this is unlikely to translate easily to WEFs as the parameters and issues are fundamentally different.
- A DAC decision could also be subject to review, whereas the Minister's decision is final. To go through a DAC process and then off to VCAT would be a significant burden for industry and submitters and duplicates existing process.

SECTION 173 AGREEMENTS



Are the options recommended by the 2004 expert group appropriate?

- The options recommended are generally supported. In particular:
 - Eliminating the Minister’s involvement (unless a party) in the preparation of a Section 173 Agreement; and
 - Removing the requirement for agreements to be lodged with the Minister.

INTERACTION WITH OTHER LEGISLATION

Are there areas where the operation of the Act is in conflict or produced inefficiencies in the interaction with other legislation?

- *Environment Effects Act 1978* – The Policy and Planning Guidelines for development of wind energy facilities in Victoria state that most WEFs can be adequately assessed under the *Planning and Environment Act 1987*. A significant amount to environmental investigation is generally required through the permit process for WEF - a land use which largely benign and that generally occupies about 1% of its site. This level of assessment could be seen as being **equivalent** to the preparation of an EES.