

Environment Protection Authority

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Max Kitchell
Chairperson, Development Assessment Panel
Whaleback Ridge Renewable Energy Major Project
Tasmanian Planning Commission
GPO Box 1691
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Dear Max Kitchell

WHALEBACK RIDGE RENEWABLE ENERGY MAJOR PROJECT REPRESENTATION IN RELATION TO DRAFT ASSESSMENT CRITERIA UNDER s60ZL(2) OF THE LAND USE PLANNING AND APPROVALS ACT 1993

I am writing in response to your letter of 28 June 2024, in which you advised that the Development Assessment Panel (the Panel) for the Whaleback Ridge Renewable Energy Major Project (the Major Project) has prepared Draft Assessment Criteria, and gave notice of the exhibition of the Draft Assessment Criteria, in accordance with section 60ZL(1) of the *Land Use Planning and Approvals Act 1993* (LUPAA).

The Environment Protection Authority (EPA) has undertaken a review of the Draft Assessment Criteria on behalf of the Board of the Environment Protection Authority (the Board) and is making a representation under section 60ZL(2) of LUPAA as outlined in this letter.

Requirement for the Major Project Impact Statement (MPIS) to be informed by the EPA Board's guidance

The Board is required by section 60ZC of LUPAA to undertake an Environmental Impact Assessment (EIA) of the Major Project in accordance with the Environmental Impact Assessment Principles set out in section 74 of the *Environmental Management and Pollution Control Act 1994* (EMPCA) (as modified by 60ZC(9) of LUPAA).

As required by section 60ZA(5) of LUPAA, the Board's Assessment Requirement Notice (ARN) in relation to the Major Project dated 15 April 2024 specified the matters the Board required to be contained in the assessment criteria which the MPIS is required to address and the reasons why the Board has specified the matters which have been referred to. The Board's ARN also contained *indicative* guidance under Schedules 1, 2 and 3 of the respective notice which sets out the information base that the Board requires Westcoast Renewable Energy Pty Ltd (the Proponent) to establish in the MPIS in order for the Board to properly undertake its EIA. In accordance with section 60ZC(5) to (8) of LUPAA, the Board intends to provide *final* guidance to the Panel in due course which is the guidance that the Board is required to provide to the Proponent under section 74(4) of EMPCA, as modified by section 60ZC(6) of LUPAA.

Although it is open to the Board to consider other documents and evidence when determining its preliminary and final advice in relation to the Major Project, the MPIS should be sufficient to serve as the primary document upon which the Board relies when carrying out the EIA. It is therefore necessary that the MPIS considers and is informed by the substance of the Board's guidance in order for a sufficient information base to be established for decision-making by the EPA Board in accordance with section 74(9) of EMPCA.

If the substance of the Board's guidance is not reflected in the assessment criteria nor formally provided to the Proponent, with some instruction, it is likely that the MPIS will be inadequate for the purpose of the Board undertaking the EIA. This will mean that further information will have to be sought, which may cause delay in the assessment process and potentially unfairly disadvantage the Proponent.

While the Draft Assessment Criteria broadly capture the matters contained in the Board's ARN, the extent to which the Board's guidance needs to be considered by the Proponent when preparing the MPIS is not made clear. The sole reference to the Board's guidance in the Draft Assessment Criteria is made in Appendix C which states, 'Guidance from the Environment Protection Authority (EPA) to the Panel on information related to environmental assessments is included', however, it is not clear where or how the Board's guidance has been included, noting that under section 60ZC(7) of LUPAA the Board's guidance *cannot be provided* to the Panel until after the Draft Assessment Criteria have been considered.

The Draft Assessment Criteria and the EPA Board's Policy on noise level limits for wind energy projects

The indicative guidance provided in Schedules 1, 2 and 3 of the Board's ARN sets out the necessary level of detail that is required by the Board to form the information base for their assessment of the Major Project, which includes survey and study requirements for specific issues which are considered to involve a higher level of environmental risk, relevant environmental performance and legislative requirements, associated regulations and policies, and reference to accepted practice or best practice environmental management.

While the Draft Assessment Criteria have generally not specified or provided reference to the level of detail required by the Board to address environmentally related matters in the MPIS, it is noted that the requirements for the criterion of amenity and interference are inconsistent with the Board's ARN, specifically the Board's policy on noise limits for wind energy projects. Criterion 3.14 of the Draft Assessment Criteria requires the sound level of operating wind turbines to comply with the *New Zealand Standard NZS6808:2010 Acoustics – Wind farm noise (NZS 6808:2010)*, but does not require the MPIS to have regard to the Board's policy.

Prior to August 2020, the Board endorsed the use of NZS 6808:2010 for wind turbine noise limits, applying a 40 dB(A) or background +5 dB(A), whichever was the greater. However, following the Board's meeting on 4 August 2020, the Board agreed to adopt as policy a lower wind energy project noise limit of 35 dB(A) or background + 5 dB(A), which is the greater, at residences or land zoned for sensitive uses. This policy position was based on review of other jurisdictions' approaches to setting noise limits for wind energy projects, and advice at the time from the former National Wind Farm Commissioner that an appropriate level for a consistent noise limit would be 35dB(A) LA90 10 min or background noise plus 5dB(A), whichever is greater, measured outside of the residence. It is also noted that the Board's policy position is consistent with the Independent Scientific Committee on Wind Turbines recommended wind turbine noise limit of 35dB(A) to ensure minimal possible annoyance, as outlined in the Australian Energy Infrastructure Commissioner 2022 Annual Report¹ (AEIC 2022 Annual Report).

In addition to requiring compliance with NZS 6808:2010, the Draft Assessment Criteria also require an assessment of whether a high amenity noise limit is applicable. It is understood that the high amenity noise limit referred to relates to a recommendation in the NZS 6808:2010 to apply a lower, more stringent limit of background + 5dB(A) or 35dB(A) LA90 10 min, whichever is greater, for high amenity areas. The clarification of the locations where the more stringent limit would apply in the New Zealand context is determined by local authorities who identify in district plans the need to provide a higher degree of protection of acoustic amenity. The Board, when developing its policy in August 2020, acknowledged that the New Zealand concept of high amenity areas is difficult to apply in the Tasmanian context as we do not have similar areas defined in the Tasmanian Planning Scheme. Similar difficulties have also arisen in Victoria as acknowledged in the AEIC 2022 Annual Report. Greater clarity should be provided in the Draft Assessment Criteria about the intent of the requirement to assess whether a high amenity noise limit is applicable under section 5.3 of the NZS 6808 and how the Panel expects the proponent to undertake this assessment.

¹ Australian Energy Infrastructure Commissioner, 2022 Annual Report, available at: <https://www.aeic.gov.au/publications/2022-annual-report>.

Further, the Board's policy applies to operational noise emissions of an entire wind energy project and is therefore inclusive of noise emissions from all operational project infrastructure, including wind turbine generators (WTGs), substations, energy storage facilities etc. It is noted that while operational wind turbine noise is required to be compliant with NZS 6808:2010, the Draft Assessment Criteria's amenity and interference criterion require the operating sound and vibration levels from substations, energy storage systems and power lines at habitable buildings to be minimised to an acceptable level, however, an acceptable level has not been defined. If the assessment of operational noise emissions resulting from the Major Project should apply separate noise limits to WTGs as opposed to other infrastructure such as substations and energy storage facilities, the Draft Assessment Criteria should explicitly state so.

It is also unclear why the Draft Assessment Criteria introduces 'habitable buildings' as a new term or concept in relation to the assessment of noise and vibration emissions. As per NZS 6808:2010, noise limits apply to 'noise sensitive locations' which is defined in section 2.4 of the standard. The Draft Assessment Criteria also refer to 'sensitive receptors'. It is noted that the terms 'sensitive uses' and 'habitable buildings' are defined in the Tasmanian Planning Scheme and that 'noise sensitive premises' and 'sensitive receptors' are terms often used by the Board when undertaking EIA and drafting permit conditions. The Draft Assessment Criteria should define the terms used to provide clarity to the Proponent, participating regulators and the public.

Lastly, some of the references in the Draft Assessment Criteria in relation to the matter of noise and vibration emissions are incorrect. For example, the Board's ARN specified that regard should be had to Part 5 of the *Tasmanian Environment Protection Policy (Noise) 2009*, however the Draft Assessment Criteria references other sections of this document at the exclusion of Part 5.

If you wish to discuss any matters raised in this Representation, please contact Ella Jackson, Senior Environmental Officer, on 0472 560 543.

Yours sincerely



Wes Ford

DIRECTOR, ENVIRONMENT PROTECTION AUTHORITY