

## International Association for Impact Assessment Conference Paper

# The Path of Least Resistance – The Need for a National Environment and Planning Framework

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## 1. Introduction

As environmental and planning consultants involved in the very early stages of projects, pitt&sherry has been approached by national and international clients to provide advice on which State and/or Local Governments have project approvals processes that will allow the “path of least resistance” for gaining project approvals. This question is becoming part of some large clients’ project decision making processes.

While this “path of least resistance” question does not necessarily reflect a lack of commitment to good environmental and planning outcomes, it does highlight the substantive differences in gaining development approvals between States and Local Governments throughout Australia. National and international scale proponents with projects that are not linked to a static resource are looking for streamlined, consistent and transparent environmental and planning approvals processes as well as investment confidence. Governments, communities and other stakeholders want to ensure Ecologically Sustainable Development principles are upheld.

To highlight the differences in the assessment and approvals process, this paper reviews the approval paths for a hypothetical windfarm in Queensland, New South Wales and Tasmania and explores the benefits of having a nationally consistent approach to environment and planning processes.

## 2. The “Wind Farm”

In order to compare impact assessment and approvals processes across the three states, a hypothetical windfarm scenario was developed. This scenario assumes that the proponents site selection process resulted in minimal environmental impacts. This wind farm has the following characteristics:

- **Size:** 50 turbines and 11 sub stations (1 per every 5 turbines, plus one to delivery power to the electricity network);
- **Power output:** 250 Megawatt (MW);
- **Site:** Largely cleared grazing land in one Local Government Area. High Voltage powerlines with capacity are already on the site and therefore only one sub-station is required to connect to the electricity network. The site has some waterways, requires no clearing of regulated vegetation and has no Matters of National Environmental Significance (MNES); and
- **Stakeholders and Community:** Most will be very supportive, some NIMBYs (Not In My Back Yard) and regulators are not overly concerned.

## 3. Approvals Processes

The following section outlines a summary of the approvals processes for the hypothetical wind farm in Queensland, New South Wales and Tasmania. It should be noted that Figures 1 to 3 provide an overview of the planning and approvals pathways between the three states and also presents a qualitative comparison of relative effort in terms of cost and time.

### 3.1 Queensland

New or expanding wind farm proposals in Queensland are assessed under the *Planning Act 2016* and in accordance with State Code 23: Wind farm development (DSDMIP, 2018). The *Planning Regulation 2017* states that a material change of use (i.e. change in land use) for a wind farm is assessable development and requires either code or impact assessment. The wind farm outlined in Section 2 above would be a code assessable development and assessed by the relevant Local Government as all wind turbines are at least 1,500m from a sensitive land use on a non-host lot. Wind farms are also code assessable if 1 or more wind turbines for the wind farm are less than 1,500m from a sensitive land use on a non-host lot and the owner of the non-host lot has, by deed, agreed to the turbines being less than 1500 metres from the sensitive land use. The wind farm would therefore be considered against the assessment criteria detailed in State Code 23. This process and timeframes are outlined in Figure 1. Other approvals (e.g. electricity connection, clearing of protected vegetation, works in a waterway, etc.) may also be required.

A prelodgement meeting with relevant State and Local Government regulators is recommended prior to lodging the Development Application. This prelodgement meeting allows the proponent and regulators to discuss the project and requirements of State Code 23.

While stakeholder consultation is not formally required, it is strongly encouraged by regulators. It is also an important aspect of responding to some of the assessment criteria in State Code 23 (e.g. engaging with any nearby airports, Airservices Australia and the Civil Aviation Safety Authority in relation to potential risks to aviation safety associated with the wind turbines, etc.).

### 3.2 New South Wales

Wind farm proposals in New South Wales (NSW) are assessed under the *Environmental Planning and Assessment Act 1979* and in accordance with Wind Energy Guideline (Planning and Environment, 2016). The assessment pathway is dependent on the size of the Capital Investment Value (CIV) and megawatt output of the wind farm. The wind farm outlined in Section 2 would be classified as State Significant Development as it has a CIV greater than \$30M and output greater than 30MW. This process and timeframes are outlined in Figure 2. A detailed approvals pathway needs to be assessed on a case by case basis at the commencement of the project. Factors such as impacts on private land, easements, accessibility, Environmental Impact Assessment (EIA) program, understanding of the scope for the project and concept design need to be considered. Apart from a development approval, NSW wind farms also require an Environmental Protection Licence. Other approvals (e.g. requirements under the Infrastructure State Environmental Planning Policy, etc.) may also be required.

If over 25 objections are received or the Local Government object it will go through to the Independent Planning Commission (IPC). This is an extended process where the development is independently reviewed including all specialist reports and community / stakeholder engagement. The Determination process may be extended by 6 to 12 months and more detailed assessment may be required. Finding the balance with regard to environmental assessment can be challenging (i.e. not over scoping the EIA at the commencement of the project but providing sufficient detail).

NSW has a current focus on community and stakeholder consultation at the commencement of the project. This means considerable effort and cost at the front end of the development. While this is positive from a community and political perspective, it requires significant investment by the proponent prior to the project being funded. This creates a challenge for developers.

### 3.3 Tasmania

Wind farm proposals in Tasmania as outlined in Section 2 would be assessed by the relevant Local Government with the planning aspects considered and assessed under the *Land Use and Planning Approvals Act 1993*. The Local Government would refer the project to the State Environmental Protection Agency (EPA) who would assess and conditionally approve the proposal under the *Environmental Management and Pollution Control Act 1994*. An EIS would be required to be prepared for the proposed development and approval of the content of the EIS, and the subsequent assessment of environmental matters, is undertaken by the state. Planning aspects and matters which are not of state significance, are assessed by the local council under the *Land Use Planning and Approvals Act 1993* or other relevant agency (e.g. Heritage Tasmania).

Proponents must prepare an EIA as part of their development application. Unfortunately, the document size, contents and effort to complete the EIA for all sized wind farms generally remains similar.

A detailed assessment of the proposal against the Local Government's Planning Scheme would be prepared as a standalone document and assessed by the Local Government's planner. The planning assessment report will be attached the EIA, but also be submitted directly to the Local Government as part of the development application.

Stakeholder engagement is recommended by the regulatory authorities however it is voluntary up to the point of public advertising. The application is advertised by the Local Government which passes its' recommendation, and any representations received, to the EPA who then prepare an assessment report and draft conditions. These conditions, when finalised, are issued to Council and form part of the permit in addition to any conditions the Local Government proposes.

This process and timeframes are outlined in Figure 3.

## 4. The National Education Curriculum Process

The *Environment Protection and Biodiversity Conservation Act (1999)* is administered by the Federal Government and focusses on the protection of matters of national environmental significance. As highlighted in Section 3, there is no vehicle for ensuring consistency in environmental planning, assessment and approvals across Local, State/Territory and Federal jurisdictions. Aside from MNES, the responsibility for environmental planning, assessment and approvals lies with Local and State/Territory Governments which has resulted in significant variation in processes and procedures across Australia.

There is an opportunity to provide consistency across Australia and the development of the National Education Curriculum provides an example of a process for achieving this.

In Australia, primary and secondary education is the responsibility of State Governments. For many decades this has resulted in robust discussion amongst bureaucrats and educators as to what students should study at school and how to achieve consistency across that nation. Historically, there had been numerous attempts at cross-jurisdictional cooperation to achieve greater consensus on school curriculums across the country however, most curriculum development was still happening unilaterally at the state and territory level (Department of Education, 2014).

As a result, the Australian Curriculum, Assessment and Reporting Authority (ACARA) was established as a Federal statutory authority in 2008 with the aim of developing and refining the Australian Curriculum, national assessment and reporting on schooling in Australia. ACARA is directed by the Council of Australian Government's (COAG) Education Council which comprises education ministers from across Australia (see [www.acara.edu.au](http://www.acara.edu.au)).

The curriculum development process involved four interrelated phases:

- Curriculum shaping;
- Curriculum writing;
- Preparation for implementation; and
- Curriculum monitoring, evaluation and review.

(ACARA, 2012)

The Infographic in Figure 4 provides some more detail on these phases.

While the development and implementation of the National Education Curriculum provides a framework that could be used for providing consistency in the environmental planning, assessment and approvals, the *Review of the Australian Curriculum* (Department of Education, 2014) provided a series of recommendations in relation to the development and implementation of the national curriculum (i.e. lessons learned). The lessons that could be transferred to a national environmental planning, assessment and approvals framework include:

- The “missing step” in the process was the development of an overarching curriculum development framework to underpin learning area and subject content;
- It was felt that the development of the curriculum was too rushed;
- Timelines should have been applied to curriculum development for all subjects (not just the priority subjects);
- There was significant compromise in the development of the curriculum in order to get all jurisdictions and other stakeholders to agree however the educational basis for these compromises is unclear. This may have been improved with a stronger governance framework that was independent from education authorities;
- Stakeholder engagement was planned and generally implemented well; and
- It was felt that depth had been compromised by breadth.

## 5. Conclusions

As shown in Section 3 and Figures 1 to 3, the environmental assessment and approvals processes varies widely across Australia for the same type of development. Examples of this variation include:

- Development applications are lodged with Local Governments in Queensland and Tasmania with possible referral to State Government in Queensland and required referral in Tasmania. Applications are lodged directly to State Government in NSW;
- Development applications are approved by the Local Government in Queensland, by Local and State Government in Tasmania and by State Government in NSW;
- The commencement of the assessment phase through to approval can take as little as 7 months in Queensland and up to 18 months in Tasmania and NSW;
- The impact assessment process is significantly more detailed in NSW, somewhat detailed in Tasmania and less detailed in Queensland; and
- Stakeholder engagement requirements vary widely across the three states.

These divergent processes can potentially result in significant differences in terms of costs to proponents, level of stakeholder input and potentially the environmental impact of the operational project. From an economic perspective, investment at State/Territory level could be impacted as a result of the lack of consistency in the assessment and approval process. Both proponents and their consultants also face difficulties in judging the level of detail required in undertaking environmental assessments in terms of identifying risk, constraints and opportunities whilst proposing appropriate mitigation measures. Proponents also face difficulties in understanding investment cost and Return on Investment.

A pragmatic national environment and planning framework would address these and other issues. The National Education Curriculum process provides an example of how consistency could be achieved in the environment and planning fields across the three levels of Government found in Australia.

## 6. References

- ACARA (2012), *Curriculum Development Process Version 6*. ACARA, Sydney
- Department of Education (2014), *Review of the Australian Curriculum Final Report*. Australian Government Department of Education, Canberra.
- DSDIMP (2018), *State Code 23: Wind farm Development Planning Guidelines*. Department of State Development, Manufacturing, Infrastructure and Planning, Brisbane.
- Planning and Environment (2016), *Wind Energy Guideline for State Significant Wind Energy Development*. NSW Department of Planning and Environment, Sydney.

# Figures

Figure 1: Queensland Approval Process

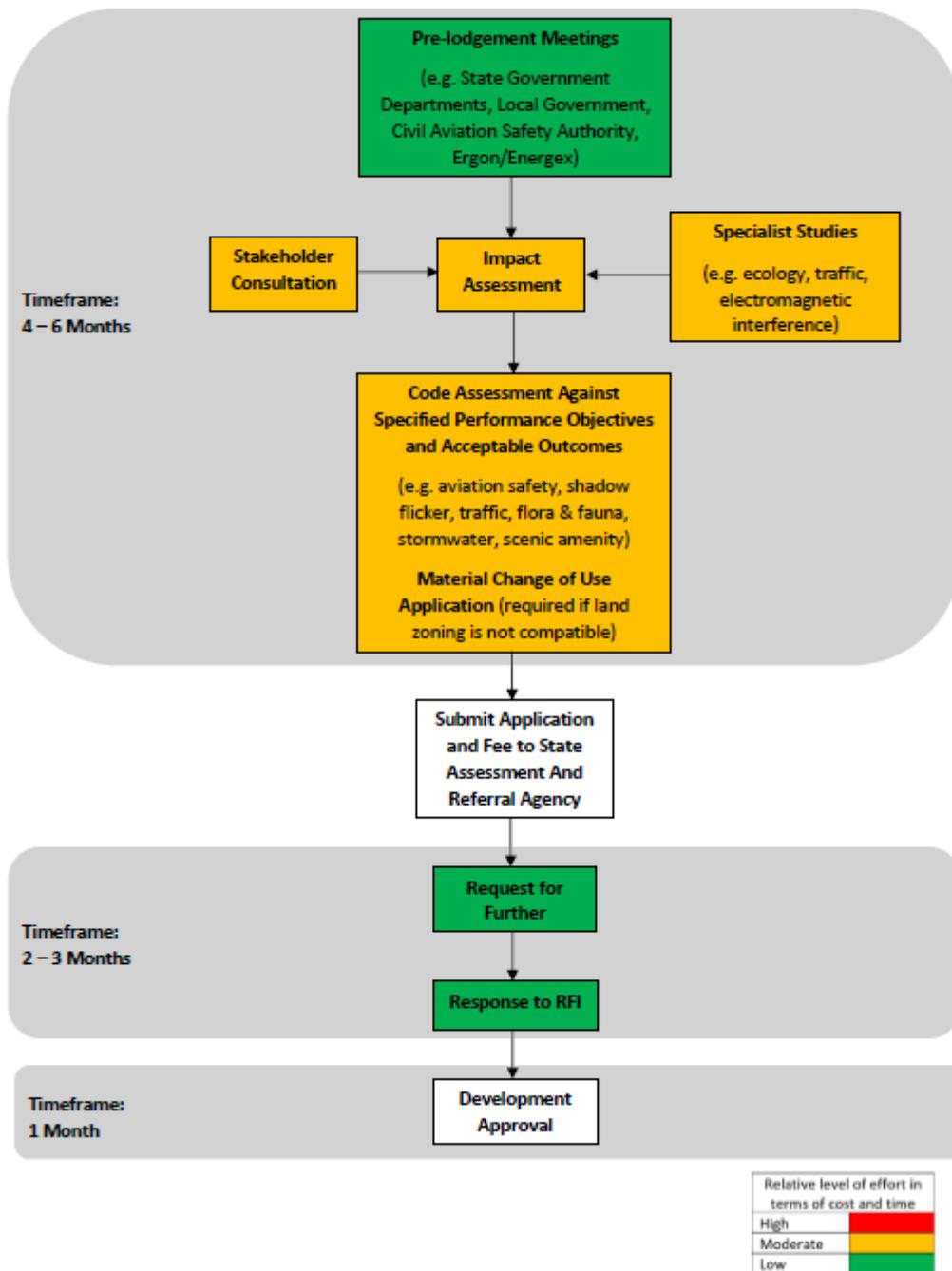
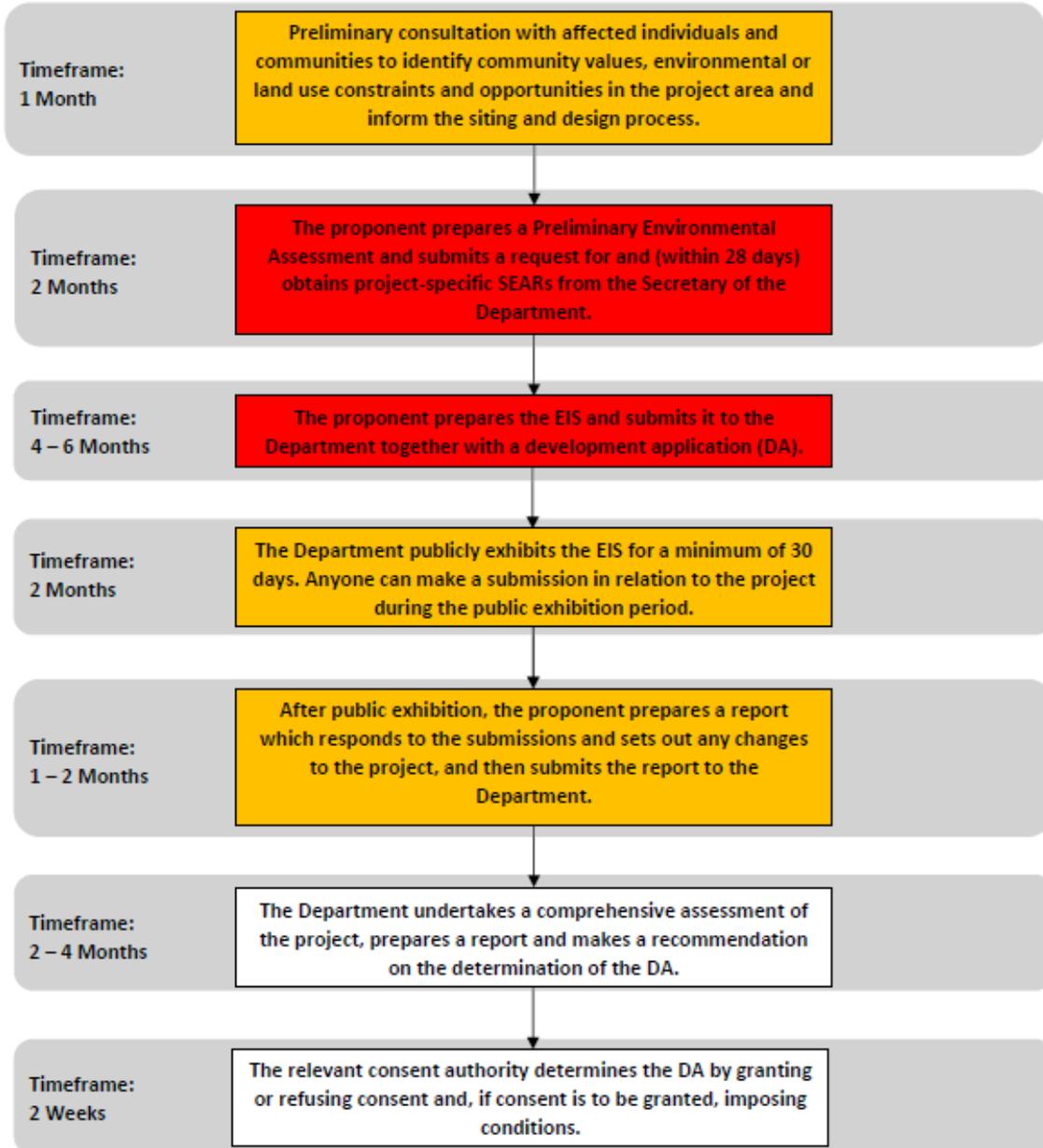


Figure 2: NSW Approval Process



Relative level of effort in terms of cost and time	
High	
Moderate	
Low	

Figure 3: Tasmanian Approval Process

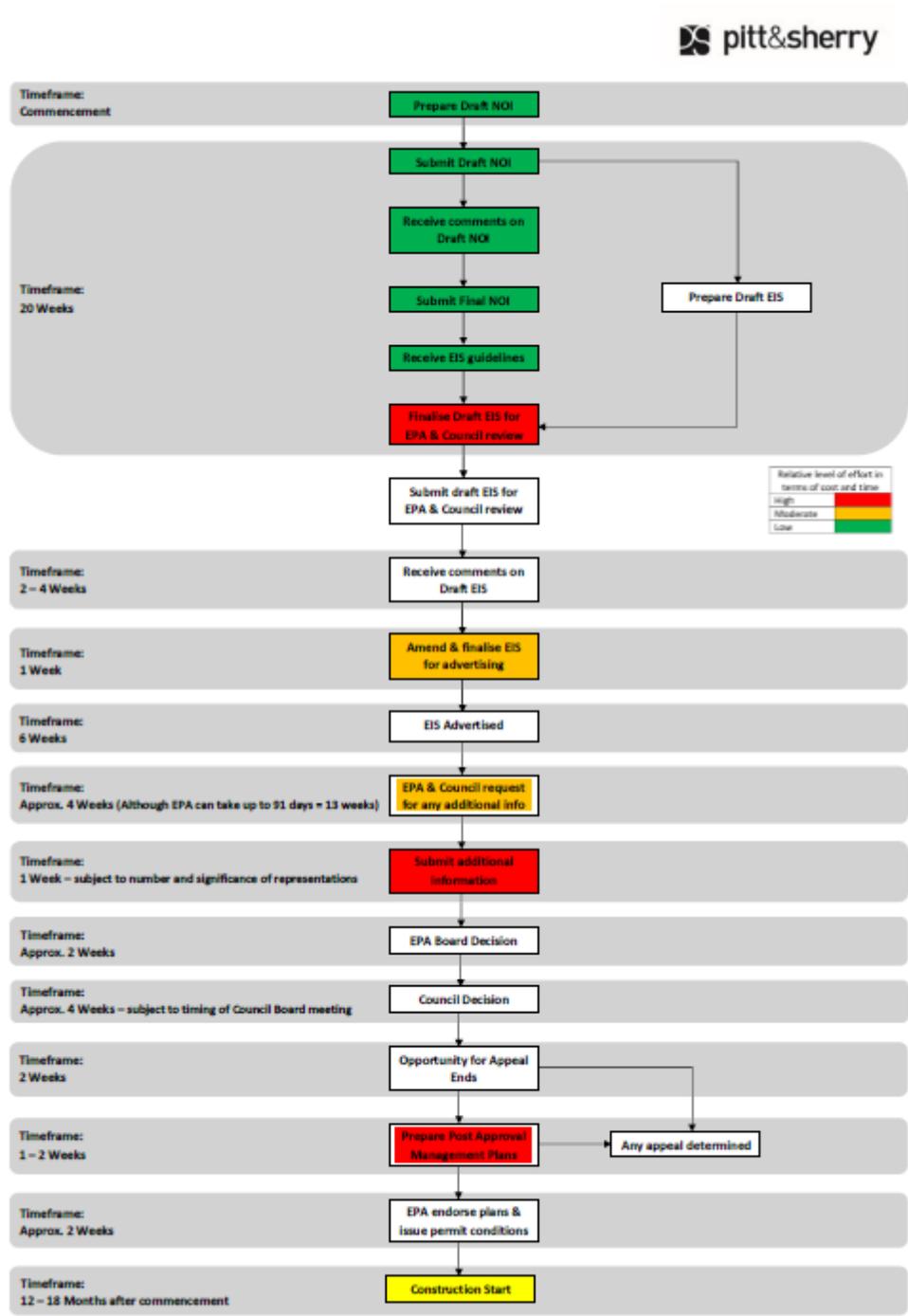


Figure 4: Development of the Australian Curriculum (www.acara.edu.au/curriculum/development-of-australian-curriculum)

