

30 March 2024

Environment Law Taskforce
Department of Climate Change, Energy, Environment and Water (DCCEEW)

RE: Response to Commonwealth Government’s consultation on environmental law reforms

Dear Madam/Sir,

Squadron Energy welcomes the opportunity to respond to DCCEEW's consultation on environmental law reforms.

Squadron Energy is Australia’s leading renewable energy company that develops, operates and owns renewable energy assets in Australia. We have 1.1 gigawatts (GW) of renewable energy in operation and an Australian development pipeline of 14GW. Our development pipeline has projects at differing stages of development and includes wind, solar and firming capacity such as batteries and gas peaking plants with dual fuel capability.

We are also constructing Australia’s first LNG import terminal at our Port Kembla Energy Terminal (PKET). Once constructed, Squadron Energy's PKET will include a floating storage and regasification unit (FSRU) to enable LNG to supply the domestic market.

We have extensive experience in development and value our position of being able to work with the regulators to advance projects which meet the jurisdictional environmental and planning expectations. We have enjoyed a position in the industry where the regulators know what to expect from our developments. We are generally supportive of the development of assessment processes that enhance the measures undertaken to minimise the environmental impacts of projects. In the context of meeting emissions reductions targets, it is important that the broader environmental benefit of decarbonisation driven by the accelerated delivery of renewable infrastructure is considered.

Given the scale and significance of the proposed changes, there remains significant unknown and potentially problematic issues with the draft legislation and the proposed environmental instruments to give it effect. This creates significant ambiguity regarding the implications for project assessment and approval. Further guidance material is needed to provide developers and community with an understanding of when consistency with the Act/Standards and avoidance of risk of impact is achieved.

The following comments are grouped based on the materials developed in October and December 2023.

Feedback on National Environmental Laws, 30-31 October 2023 package

Squadron Energy supports in-principle the definition of a well-structured, well-defined environmental approval process. The establishment of the Environmental Protection Agency (EPA) and the proposed two-step assessment process are generally appropriate. However, some clarification of the purpose and interaction of these process is required to support how they work in practice. More detailed comments on this matter and others related to the assessment process, decision making criteria and approval requirement is provided In Table 1.

Table 1: Feedback on National Environmental Laws, 30-31 October 2023 package

Item	Focus/draft policy	Comment/proposed approach
Assessment and approval pathways		
1.1 Applying for approval to take action	Application for approval to take an action – including an estimate of Scope 1 & 2 emissions	Clarification is required on the requirement for renewable energy projects to account for scope 1 and 2 greenhouse gas emissions in the development phase. If the intent of this to capture Scope 1 (diesel) and Scope 2 (electricity) during construction and operation then renewable projects will face significant challenges in meeting net positive outcomes. Without broader consideration of the net benefit of renewable projects to decarbonising the energy system, it needs to be considered whether this requirement remains suitable.
1.5 Prohibition against taking action that is the subject of an application for approval	Established conditions for prohibited action during assessment where that is anticipated to have a significant impact.	Clarity required on how the EPA determines likelihood of a significant impact and process for activities that are undertaken in advance of approval, related to a broader action, but with a low likelihood to have a significant impact on Matter of National Environmental Significance (MNES). For example, geotechnical studies. This is important as various actions which are not likely to have a significant impact on MNES may be delayed and stall a project. There is also a cross over with the proposed low impact pathway. Further guidance on the treatment of low impact activities that are part of a broader action under assessment would support clarity here and avoid delays to projects.
2.4 Timeframe for EPA decision	Establishes timeframe for EPA decision.	Suggest clarity on what the outcome is if the EPA does not meet timeframes (e.g. either deemed decision/refusal/invalidate).
3.2 Notification of decision	Establishes process for notification of decision	No timeframe established for notification of a decision for a low impact pathway application. Suggest that timeframes are required to notify a decision post the 20 BD assessment period for low impact pathway applications.
3.8 Mandatory considerations to attach a condition to an approval to take an action	Establishes condition to be satisfied when attaching a condition	This section requires EPA to have regard to State conditions. It is not clear how this conditioning will be managed between the Commonwealth and jurisdictions (e.g. how and by whom will enforcement action be taken) Further guidance is required on how the EPA conditioning powers apply (e.g. in the case that parts of the action do not impact MNES)
Ministerial call-in power		
	The Minister may elect to make an environmental approval decision that would otherwise be made by the CEO of EPA or an accredited decision-maker.	Suggest the need for further clarity around the scope and exercise of the Ministerial call-in power. Support the proposal that the Minister be unable to remake a decision already made by the EPA.
Matters of National Environmental Significance (MNES)		
Definition of cumulative impacts	Definition of MNES standard includes addressing "detrimental cumulative impacts and threatening processes".	It will be challenging for individual projects to be judged against cumulative impacts, but in some circumstances it will be an important element of impact assessment. Clear guidance on how cumulative impacts will be treated in practice is critical to provide clarity and transparency on

Table 1: Feedback on National Environmental Laws, 30-31 October 2023 package

		<p>the requirements that are to be met and over the quality of the decision making process. Short of this, ambiguity in the definition of cumulative impacts and the process for assessment risks introducing ambiguity and the potential for delays and frustrations to emerge.</p> <p>As a starting point, there remains a need for clarity in how a regional/area-based scale assessment for cumulative impacts will be assessed e.g. via Strategic Assessments and/or Regional Plans.</p>
Definition of habitat	<p>The definition of habitat includes “areas that are occupied, were occupied, or may reasonably be expected to become occupied in the future via natural processes, environmental change, habitat restoration or conservation translocation”.</p>	<p>This definition does not exclude any landform/land zone. In addition, under the current definition of habitat, there is the potential for any impact to be a reason for refusal on the basis of it being inconsistent with the Protection Statement/National Environmental Standard, even if the viability of a species is not impacted and where a net positive outcome can be realised.</p> <p>Confirm the requirements are and/or.</p>
Restoration actions and contributions		
Requirement for restoration contributions	<p>Requirement to deliver a project gain “of at least X%” relative to a baseline.</p>	<p>Clarify how the value of X is to be determined (e.g. through peer reviewed expert advisory committee)</p> <p>Also suggest that the reforms ensure that there is alignment with State-level offset policies, including considering whether ‘State offsets’ could be available for Commonwealth environmental law purposes.</p>
Data and information – data reliability categorisation	<p>Proponent engaged consultants’ data is preferentially weighted if the biological survey data is obtained via a downloaded app for a published protocol and results in relevant data that is shared via the Australian Biodiversity Information Standard.</p>	<p>Suggest further clarity is needed on the treatment of data and its implication for the decision-making process. For example, generally proponent engaged ecological surveys would generate Tier 2 data reliability that requires additional EPA assessment to be relied upon for applications. Several core clarifications needed:</p> <ul style="list-style-type: none"> • is Tier 2 data subject to decision maker assessment? • what process applies when there is a difference of opinion with the respected ecologist consultant by an internal assessor? • how will inconsistencies in Tier 1 and 2 data be dealt with?

Feedback on National Environmental Laws 13-14 December 2023 package

Overall, we are comfortable with the intent of the proposed regional planning and strategic assessment processes to provide clear guidance to project proponents, and local communities, regarding preferred development areas. As with the changes discussed above, clarification of the purpose and interaction of these processes is required to support them to work effectively in practice. Regarding MNES, for the majority, the stated intent is to protect habitat, support viability, not be inconsistent with conservation planning documents and deliver a net positive outcome. Whilst this intent is broadly suitable, we consider that accompanying regulations need to be drafted in a way that does not unreasonably restrict projects such as clean energy developments that support the mitigation of climate impacts. Table 2 provides more detailed feedback on matters related to strategic assessment, regional planning and accreditation.

Table 2: Feedback on National Environmental Laws 13-14 December 2023 package

Item	Focus/draft policy	Comment/proposed approach
Strategic assessments		
1.1 Registration & agreement to conduct a strategic assessment	Prior to a class of actions being assessed (i.e. number of applications of the same nature), a strategic plan must be developed to assess significance at a landscape scale.	Clarification is required regarding: <ul style="list-style-type: none"> the number of actions that triggers this requirement. how this will impact assessment timelines of independent applications within the assessment area of the strategic plan. whether the intent of a strategic plan is to be an alternative assessment pathway for all applications impacted by the area and matters under assessment. Interaction with the intent/purpose of regional development plans.
3.2 and 3.3. Strategic plan and approval timeline/Strategic assessment approval timeline	NA	There is no stated timeline for EPA endorsement of a strategic plan.
4.1 Strategic plan review	Proposed a review of the strategic plan every 5 years. May result in a revoked approval.	Suggest that any review of a strategic plan should focus on approved actions individually and provide sufficient opportunity for rectification plans to be put in place.
Regional Planning		
General	Covers preconditions to the making of a regional plan and the requirement to publish draft and final regional plans.	Need to clarify the assessment pathway for projects where a regional plan is in effect providing authorised priority development activities to be undertaken in the Development Zone. Section 3.3 suggests notification requirements only.
Decision making at the landscape and/or seascape scale		
General	Proposal to provide a range of tools to support decision making at the landscape and/or seascape scale.	A process is required to manage changes to landscape and/or seascape data where there are errors or where new information emerges. For example, publications of updates to inform assessments (site specific applications, and of a regional and strategic nature).
Accreditation		
1.1. Accreditation	Accreditation arrangements are intended to allow a state, territory or Commonwealth regulator to assess all or part (i.e. not all protected matters) of a proposed action under their own legislation.	We support any approach that seeks to reduce overlapping State and Commonwealth regulatory frameworks when a national environmental standard is in effect. However, clarity is required on: <ul style="list-style-type: none"> How transitional arrangements apply to existing bilateral agreements while the accreditation processes are put in place.

Table 2: Feedback on National Environmental Laws 13-14 December 2023 package		
		<ul style="list-style-type: none"> Who's responsible for managing any difference of opinions in data requirements.
2.11 Varying an accreditation	The accredited process is required to notify the EPA of any variation to the class of actions.	Clarity required on: <ul style="list-style-type: none"> what constitutes a variation to the class of actions. the timeframe for the variation assessment of an accreditation.
Addendum		
Community consultation – Section 3	The addendum identifies the EPA's responsibility to consider community consultation in the assessment of an EPA managed application.	Suggest the need for: <ul style="list-style-type: none"> guidelines to support the regulator's assessment of community comments in the context of protected matters only. clarification of public consultation requirements and timelines.
Matters of National Environmental Significance		
Regional Planning – general	Provides a tool to support net positive outcomes for MNES.	While the Regional Plan MNES is broadly consistent with the framework, it relies on landscape scale ecological assessments that may not be reliable at a property scale. This may present challenges in terms of compliance with a Development Zone's permissibility. Suggest the need for a process where any disputes on boundaries or heat mapping of ecological values based on site specific data that meets Tier 2 data requirements.

We look forward to the opportunity to continue to engage in work to support the continued and rapid uptake of renewable generation in NSW. If you would like to discuss this submission please contact Rupert Doney - Director of Policy at rdoney@squadronenergy.com

Yours sincerely,



Ed Mounsey
Executive General Manager - Development

For and behalf of Squadron Renewables Pty Ltd (ACN 127 205 645)